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IN THE
United States Circuit Court of Appeals
 For the Ninth Circuit

SOUTHERN OREGON COMPANY
 DEFENDANT AND APPELLANT

VS.

UNITED STATES OF AMERICA
 COMPLAINANT AND APPELLEE

Appellant's Brief of the Facts

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SOUTHERN OREGON COMPANY,
Defendant and Appellant.

vs.

UNITED STATES OF AMERICA,
Complainant and Appellee,

Appellant's Brief of the Facts

FACTS ADMITTED BY COMPLAINANT.

I.

On March 3, 1869, Congress passed the act granting lands to the State of Oregon to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Roseburg, pleaded on pages 1, 2, 3 of Plaintiff's Complaint (pages 3, 4 and 5, printed Abstract of Record.)

II.

On June 18, 1874, Congress passed an act entitled, "An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," which act is pleaded on pages 3 and 4 of Plaintiff's Complaint (pages 5 and 6 of printed Abstract of Record).

III.

On October 22, 1870, the legislature of the State of Oregon passed "An act granting certain lands to the Coos Bay Wagon Road Company," which act is pleaded on pages 4 and 5 of the Plaintiff's Complaint (pages 6 and 7 of printed Abstract of Record).

IV.

It is admitted by the complainant that the road was completed and the grant earned.

V.

It is admitted that on the 31st day of May, 1875, the Coos Bay Wagon Road Company entered into the agreement (Exhibit B of the complaint) with John Miller to sell all the granted lands then unsold to John Miller, quoted on pages 42 to 55 of printed Abstract of Record.

VI.

It is admitted that on the 31st of May, 1875, the Coos Bay Wagon Road Company executed the deed to John Miller, pleaded on pages 55 to 72 of printed Abstract of Record.

VII.

It is admitted that on the 7th day of January, 1884, the Coos Bay Wagon Road Company executed to William H. Besse the deed pleaded on pages 78 to 101 of printed Abstract of Record.

VIII.

It is admitted that on the 8th day of March, 1884, the Oregon Southern Improvement Company executed to the Boston Safe Deposit & Trust Company the deed of trust pleaded on pages 101 to 126 of printed Abstract of Record.

IX.

It is admitted that the "Schedule containing all sales or conveyances made by the Coos Bay Wagon Road Company prior to May 31, 1875," printed on pages 36 to 41 of printed Abstract of Record, as Exhibit "A" is a correct list of all the lands sold by the Coos Bay Wagon Road Company prior to May 31, 1875, as to the description of the land, date of conveyance and name of purchaser.

X.

It is admitted that by *mesne* conveyances and through the proceedings in the United States Court for the District of Oregon in the foreclosure suit brought by the Boston Safe Deposit & Trust Company the legal title to all the lands described in Exhibit "H" to the bill of complaint, on pages 131 to 138 of printed Abstract of Record of said bill, became and at the date of the beginning of this suit was vested in the Southern Oregon Company.

FACTS PROVED BY THE TESTIMONY.

I.

A large portion of the lands included within the exterior limits of the grant had been taken up by settlers prior to the grant.

II.

The land remaining in the grant not taken by prior settlement consisted of two classes: First, the bottom land which was valuable for cultivation and, second, the hill and timber land not susceptible to settlement. About ten per cent of the grant was bottom land valuable for cultivation, and the remaining ninety per cent hill and timber land unfit for cultivation.

III.

The defendant is an innocent *bona fide* purchaser, for full value.

IV.

The hill and timber land, constituting about ninety per cent of the grant, could not be sold within five years from the date of the grant in 160-acre tracts for any sum.

V.

The government has heretofore litigated the question of the rights of the parties under this grant and is estopped by the record of the four suits. (Defendant's Exhibits 240, 241, 242 and 243, pages 410 to 528 of printed Abstract of Record.)

VI.

On January 1, 1884, the Oregon Southern Improvement Company executed in good faith, the trust deed to the Boston Safe Deposit and Trust Company, and the foreclosure of said mortgage, begun December 28, 1886, resulting in the sale June 23, 1887, by the master, to William J. Rotch and William W. Crapo, was necessary because the company at that time had become insolvent and was unable to meet the obligation.

W. W. Crapo—Pages 249 to 260 of Abstract of Record.

Wm. Rotch—Pages 260 to 279 of Abstract of Record.

This testimony is confirmed by all the letters passing between Smith, Crapo, Metcalf, Howard and every officer of the company, and the minutes of the resolutions introduced in evidence.

The above facts—admitted and proved—constitute the salient features of the case as presented. The greater part of the complainant's oral testimony attempted to show that the road was not properly constructed and was not, in fact, a good road. But this is entirely immaterial. The act of Congress having vested in the Governor the right to pass upon the fact as to whether the road was completed or not and the Governor having accepted the road, further inquiry is precluded. This same

point was presented in the case of the United States vs. Dalles Military Road Company, 40 Federal 114, and U. S. vs. Willamette Valley and Cascade Wagon Road, 54 Federal 807.

Outside of this testimony plaintiff's case, on the oral evidence, consisted of an attempt to show that during the years following the construction of the road the terms of the grant were talked about in the various small settlements lying along the road. But this fact, if it ever was a fact at all, is unimportant. It might be said, however, in passing that plaintiff's testimony does not sustain plaintiff's contention. It is true that some witnesses testified that Dr. Hamilton, president of the Coos Bay Wagon Road Company, told them they should have their lands at \$2.50 per acre, but this was not because of any terms contained in the grant, nor does any witness testify that he was so informed by Hamilton. In none of the conversations reported by the witnesses were the terms of the grant referred to, nor was any intimation made by Hamilton that he was under *obligation* to sell at \$2.50 per acre or any sum. Based upon the testimony of certain witnesses who say Hamilton promised them land at \$2.50 an acre and the company wouldn't sell at that figure, the Government seeks to support the contention that the road company when applied to for lands refused to sell them, and much reliance is placed upon the cases of Johnson, Smith and Houghton. But these people were not claiming the *right to purchase* under the grant. They were *deny-*

ing the right of the road company to hold the land at all, and setting up an independent title in themselves. This is conclusively shown by the record of the suit brought by the company against Johnson (Defendant's Exhibit 199) and by the testimony of Yoakam, for defendant, and Batter, one of the complainant's witnesses. Yoakam testifies as follows (pages 281 to 283 of Abstract of Record) :

“Q. Did you know a man named Johnson in there, about whom there was a dispute?

A. Yes.

Q. Do you know what he claimed about his land?

A. Well, he claimed he wasn't going to buy it.

Q. Wouldn't buy it?

A. Wouldn't buy it at any price.

Q. What did he claim about his being on there prior to the survey and therefore would not buy it?

A. He took up the land before it was surveyed.

Q. And state whether or not that was the reason he alleged he would not buy it of the company?

A. Yes, that is the reason he would not buy it; I tried to get him to buy it.

Q. Do you know a man named Richard Houghton in there that there was trouble with about the land?

A. Yes.

Q. What did he claim?

A. He claimed he was out of the three-mile limit.

Q. And that was the reason he would not buy it, that he was outside the limit of the three-mile grant?

A. Yes.

Q. Do you remember a man named Patrick Smith that you had trouble with about the land?

A. Yes.

Q. What did you have trouble about?

A. He would not buy it; he said it belonged to the government, and would not give any answer; he would not talk about it; he would not buy it at any price.

Q. Did Smith claim to be there ahead of the survey?

A. Yes; they were, we knew that.

Q. And these people were claiming to be in there ahead of the survey and would not buy at all?

A. Yes; I knew they were there ahead of the survey.

* * * * *

Q. What were your instructions, Mr. Yoakam, at the time you were acting for the company in the adjustment with these settlers as to whether you should sell the lands or not?

A. *My instructions were to sell to every man that wanted to buy that had settled on the property, at any price I could get them to make, to use my judgment entirely, my own judgment and do the best I could with them to settle it with them, and sell the property to them if they would take it.*

* * * * *

Q. Did you follow out those instructions?

A. I did.

Q. Did you endeavor to sell to them?

A. I did endeavor to sell to them, dozens and

dozens; I could not sell them, and there was a great many I did sell.

Q: During the time you were having these controversies with the people who had settled upon the land, prior to your coming, did you ever hear from any of them, or from anybody, a claim that there was a condition in this grant compelling the company to sell at \$2.50 an acre and in 160-acre tracts?

A. Never heard such an idea advanced, although I offered to sell for less than that.

Q. But during that time did any of them make that claim?

A. Never.

Q. When did you first hear of that claim?

A. I never heard of that claim until some time within the last years, published in the papers throughout Coos Bay.

Q. A man by the name of Minot, at the time he brought this suit?

A. Yes; at the time he brought the individual suits, because I am well acquainted with Minot and the people he is interested in.

* * * * *

Q. Now, Mr. Yoakam, after you get back a mile or a mile and a half from the sloughs or navigable waters where you could log advantageously, I will ask you if the balance of that grant running over the hillside and being timbered and rocky, could have been sold at that time for \$2.50 an acre, and in 160-acre tracts, or for any sum in any quantities?

* * * * *

A. No, it could not. You could take up any timber anywhere—take up Government land for nothing, where it was not surveyed at all.”

The pleadings in the case of W. A. Johnson show that the claim now set up that the settlers were claiming that there was a limitation in the grant was not even mentioned. The following is a copy of Exhibit 199, omitting certificate:

“In the Circuit Court of the State of Oregon for the County of Coos. The Southern Oregon Company, plaintiff, vs. W. A. Johnson and Mary Johnson, defendants. Action at law to recover real property.

“The plaintiff above named for his cause of action against the defendants above named states and alleges the following facts:

“1st. That the plaintiff now is, and at all times in this complaint stated was, a private corporation duly organized and existing under the laws of the State of Oregon, and by its articles of incorporation duly authorized to receive title to, own and hold lands and other property.

“2d. That the plaintiff is the owner in fee of all those certain pieces and parcels of land situated, lying and being in the County of Coos and State of Oregon, particularly described as follows, to wit: Lots numbered seven and eight and the southwest quarter of the northwest quarter of section twenty-five in township twenty-eight, south of range twelve west of the Willamette Meridian.

“3d. That the plaintiff is entitled to the immediate possession of the said above-described lands, and that the defendants, W. A. Johnson and Mary Johnson, wrongfully withhold the possession of the same from plaintiff to the plaintiff’s damage in the sum of two hundred dollars.

“Wherefore plaintiff demands judgment against the defendants for the recovery of the possession of the demanded premises, and for the sum of two hundred dollars damages for the withholding the possession thereof, and the costs and disbursements of this action.

S. H. HAZARD,
Attorney for Plaintiff.

“In the Circuit Court, Coos County, State of Oregon. The Southern Oregon Company, plaintiff, vs. W. A. Johnson and Mary Johnson, defendants.

“The defendants for answer to the plaintiff’s complaint herein,

“1. Deny that plaintiff is the owner in fee of land situated, lying and being in the County of Coos and State of Oregon, particularly described as follows: Lots numbered 7 and 8 and southwest $\frac{1}{4}$ of northwest $\frac{1}{4}$ of section 25 in township 28, south of range 12 west of the Willamette Meridian, or any of said lands, or have any title in fee or other title or any title to said lands.

“2. Deny that plaintiff is entitled to the immediate possession of said above described lands, or any of said lands, or any possession of any of said lands immediately or at any time.

“3. Deny that the defendants or either of them,

wrongfully or otherwise, withhold the possession of said described lands, or any of said lands, to the plaintiff's damage in the sum of \$200 or in any sum or any damage, or at all.

"II.

"For a second and further defense defendants allege:

"1. That during all the time the plaintiff and their grantors have claimed the premises described in the complaint herein, these defendants were in the actual possession of said lands, claiming and holding the same adverse to the plaintiff and their grantors.

"2. That in the year 1873 one G. D. Hobson was in the actual possession of and living upon said described lands and holding the same adversely to the plaintiffs, their grantors and all other persons, and so held the same until the year 1875.

"3. That in the year 1875 one John Clinton for a valuable consideration purchased all of said Hobson's right, claim, interest and possession of said described lands, and immediately thereafter took and continued actual possession of and lived upon the same and continued to hold the same adversely to the plaintiffs and their grantors and adversely to their pretended title until the year 1878.

"4. That in the year 1878 these defendants for a valuable consideration purchased of the said John Clinton all of his claim, right and possession to and of said described lands, and defendants took immediate, actual and continued possession of and have

ever since and still lived upon said lands and held and still hold the same adversely to the plaintiffs and their grantors and their pretended title thereto.

“5. For 18 years the defendants, their predecessors and grantors have been in the actual and continued possession of said lands and lived upon and held the same adversely to the pretended title of the plaintiff and their grantors and to the plaintiffs and their grantors.

“III.

“For third defense, defendants say:

“1. That these defendants have been and now are holding said premises described adversely, to the plaintiff in good faith, and that while so holding they made permanent improvements upon the premises of the present value of \$2500. That they are still existing and affixed to the land, and that they better the conditions of the property for the ordinary purposes for which it is used, which sum or so much thereof as may be necessary the defendants will set off against the damages to which the plaintiff may be entitled for the use and occupation of said premises in case of recovery thereof by plaintiffs.

“Wherefore defendants ask that plaintiff do not recover against defendants and that defendants may recover costs, etc.

T. G. OWEN,
E. D. SPERRY,
Defendants' Attorneys.”

This Exhibit 199 is not in the printed Abstract, but the original is here under order of Court.

In view of this testimony it is clear that even though Hamilton, as president of Coos Bay Wagon Road Company, told different people that the company would sell to them at \$2.50 per acre, and although this matter was discussed by the settlers, no one interested in acquiring title to the lands or any of them ever set up the claim that the company was obliged to sell the lands at any price or in any quantity. A reference to the testimony will further show that the witnesses got this grant mixed up with the railroad grant and thought there was something in it about "settlers" or "actual settlers."

For instance, a man named Loggie, who for a time was in the employ of Oregon Southern Improvement Company, says (pages 384-385 of printed Abstract) :

"Q. You have a distinct recollection, have you, of discussing the terms of the grant?

A. Oh, yes, I remember talking it over with Hazard, yes.

Q. And you say you discussed with him the terms of that grant with reference to these lands being sold to settlers or actual settlers?

A. Yes, I remember those two distinct terms. I think they were applicable to—one to the Coos Bay Wagon Road and one to some other grant; one was settlers and the other actual settlers. I remember of those two, of the difference in those two terms.

Q. You are positive that the condition of the grant to the Coos Bay Wagon Road Company was that the land should be sold to settlers or to actual settlers, whichever one of those terms may apply?

A. Well, I don't remember of reading it, but that was the general opinion.

Q. And that is the opinion you are testifying to here as being entertained by everybody down there?

A. It was generally conceded that that was the—

Q. Generally conceded by everybody that that was the terms of the grant?

A. Yes, sir." * * *

Other witnesses testify to the same thing, showing clearly that they had in mind the railroad grant and not the wagon road grant. But no witness claims that either the Oregon Southern Improvement Company or this defendant or its officers ever heard of such a claim.

All plaintiff's testimony as to the character of the constructed road, as to local rumors of the pretended conditions in the grant, as to Dr. Hamilton's promises, as to the cost of clearing the land should be struck out as immaterial. But if it is left in it doesn't change or affect the issues.

CULTIVABLE LANDS TAKEN UP PRIOR TO GRANT.

Under the first heading *supra*, that a large portion of the lands within the limits of the grant had been taken prior to the grant, we cite the court to the following testimony showing that the land in the valleys had practically all been taken up prior to the grant:

W. J. Coates—Page 245, Abstract of Record.

A. E. Bushnell—Page 246, Abstract of Record.

RELATIVE PERCENTAGE OF BOTTOM LAND FIT FOR CULTIVATION AND HILL LAND NOT SUITABLE FOR SETTLEMENT.

As to the second heading *supra*, that only a small portion of the grant was cultivatable—being bottom land—we cite the court to the following testimony in the printed Abstract of Record.

PERCENTAGE OF BOTTOM

Land which was valuable for cultivation and hill and timber land not susceptible to settlement:

S. A. Gurney, page 243. Estimates bottom land $\frac{1}{10}$.

W. J. Coates, pages 244-245. Estimates bottom land $\frac{1}{10}$.

A. E. Bushnell, page 246. Estimates 1 acre on 160.

Geo. S. Gothro, page 319. Estimates 1 to 3 per cent.

D. J. Thrift, County Assessor, page 229. Estimates 3000 acres on whole grant, half a township, barren and of no value at any time.

W. Z. Cotton, page 225. Not over 20 per cent.

George Norris, page 234. Estimates 25 per cent.

L. E. Rose, page 240. Estimates it as very little—amount of bottom land very small.

J. J. Klinkenbeard, page 242. Ten per cent would certainly cover it.

L. D. Smith, page 228. So small could not make guess.

INNOCENT PURCHASER.

That the defendant, Southern Oregon Company, was an innocent purchaser in good faith is conclusively shown by the testimony, if such fact ever can be shown. It must be remembered that over forty years have elapsed since the completion of this road. All the parties identified with its construction, whether officers of the Coos Bay Wagon Road Company or of the Oregon Southern Company, are dead: Besse, who made the original purchase; Metcalf, the first manager of the company; Hamilton, president of the Coos Bay Wagon Road Company; Prosper and Elijah Smith, who were active in furnishing money and assisting in carrying on the company, and Elijah Smith particularly, being president for many years. These people have all passed away and left the defense of their acts in the hands of others who had no connection with the initiation of the work. Crapo, however, who helped finance the

project after the lands had passed out of the Coos Bay Wagon Road Company, is still alive and his testimony is in the record in the shape of a deposition. Mr. Crapo was a man of affairs in the early days. As he says himself: "I have served in Congress, have been president of railroads and of banking institutions, state and nation, and have administered trust estates." On pages 249 to 260 of Abstract of Record, he gives a history of his connection with the project of buying the Coos Bay Wagon Road Company land through Besse, how the money was raised, etc., and the good faith of the purchaser, as follows:

Whereupon the defendant and appellant called W. W. Crapo, who testified in substance as follows:

"That he is eighty-one years old, lives in New Bedford, Mass.; is by profession a lawyer; has served in Congress, been president of banking institutions, state and national, has administered trustee estates and has been active in business affairs during his whole life. He first became interested in Southern Oregon Company lands in 1883; that Wm. H. Besse induced him to invest some money in the purchase of bonds of the Oregon Southern Improvement Company, which covered the properties in dispute in this suit. That about March, 1883, Wm. H. Besse was the owner of a number of ships and had been out on the Oregon coast investigating the land in the neighborhood of Empire City and Coos Bay and was very much interested in it and very

enthusiastic about it. In about June or July of that year he urged him (Crapo) to join him in investments at that point, and Besse stated that in his judgment Empire City was the only port that was available for commercial purposes between San Francisco and Portland; that the bay was a fine body of water; the entries to the bay easy; it had a custom house and was the county seat of Coos County, and it offered to his mind great prospects of being a very important point on the Pacific Coast. He had become acquainted with a man named Luce, who was the principal owner of Empire City, owning a mill there, timber land, hotel and stores. Besse bought this property, but whether he had already bought it or bought it subsequent to that time, the witness does not remember. It became, however, a part of the investment in the Coos Bay Company. There was about 6,000 acres of it—a small mill and extensive dock and wharf property, where vessels stopped, etc. Another thing which attracted Captain Besse's mind and which he communicated to Mr. Crapo, was that there were coal mines in operation in the vicinity, and he had an idea of transportation of coal and lumber to San Francisco. Besse gave Crapo the names of persons who had already subscribed to the Empire, and they were men of large means in New Bedford. The proposition made by Besse was for the purchase of bonds of the property acquired, or to be acquired, of the Oregon Southern Improvement Company. The witness purchased the bonds; at first purchas-

ing \$10,000 worth; afterwards he made other purchases. The bonds were sold for actual cash at the price of 80 cents on the dollar, although some sold as low as 50 cents on the dollar. In the inception of the enterprise there was no talk then about the Coos Bay Wagon Road Company. That came in later on in the negotiations. Touching this matter, witness testifies that Besse told him he had the opportunity to purchase about 100,000 acres of land, which had been acquired by the company, or by some parties, and which grew out of a land grant given by Congress to the State of Oregon, for the building of a military wagon road from Roseburg to Coos Bay. Witness says that he was over the road twice, some years afterwards. Besse thought this land would be a very valuable addition to the property already acquired, and talked about buying coal mines in anticipation of the great development of Empire City and the timber resources and productions which would come down to Coos Bay. His attention had been called to the Coos Bay Wagon Road lands, that they could be purchased, and he asked the witness's judgment about it. The witness told Besse that two things were essential before he closed any negotiations: One was the matter of title, the other was the value of the property. Witness told Besse that the title should be carefully examined so as to know what the condition of it was. Besse afterwards reported to witness that the title had been examined by a lawyer in Portland, who had declared it perfect. Witness says that at the time he had in

his employ a man familiar with timber and the method of cruising, who was a logger, woodsman and timber cruiser, and Besse wanted witness to send Foster to Oregon to cruise the timber, and witness did so. Foster did cruise the timber and reported on it. Witness says he never had any communication with or relations with the Coos Bay Wagon Road Company, or with John Miller, or Collis P. Huntington, or Charles Crocker, the parties mentioned in the complaint in this suit. Witness knew Russel Gray as a lawyer in Boston, but had no acquaintance or relations with him as to the matters involved in this suit. Witness testified that he had nothing further to do with the transfer of title in 1883 or 1884, or the execution of the mortgage, or the acquisition of these properties, except as herein outlined. Witness remembers that the Oregon Southern Improvement Company in 1884 executed to the Boston Safe Deposit & Trust Company a mortgage on the properties, and it was the bonds under that mortgage which witness bought. The Oregon Southern Improvement Company was not successful. It spent a large amount of money in building a new mill and building a steamer, which proved unsuitable, and there were heavy losses on the mill and steamer. Due to this and large expense for building a logging railroad, which proved unprofitable, and the market for lumber having fallen away, the company was unable to pay the interest on its bonds. Witness says that about \$800,000 was actually spent in money for these dif-

ferent properties, including the Coos Bay Wagon Road Company's lands. The company paid \$100,000 for the 'Coos Bay Wagon Road lands,' being the lands title to which is involved in this suit. On the 9th of December, 1886, the Boston Safe Deposit & Trust Company, which was the trustee under the bond mortgage, was succeeded by Wm. J. Rotch and Edw. D. Mandell, as trustees. The reason for that was that the Oregon Southern Improvement Company was in considerable financial distress and it became to the interest of the bondholders to have a foreclosure of the mortgage that the property might be placed in condition for operation, etc. The change was a matter merely of convenience and because the Boston Safe Deposit & Trust Company did not wish to begin the foreclosure proceedings.

The witness further testified as follows:

Q. Mr. Crapo, at that time did you know of a limitation in the original Act of Congress?

A. I did not.

Q. Did the retirement of the Boston Safe Deposit Company as trustee and the substitution of Mr. Rotch and Mr. Mandell have anything to do with the limitation?

A. Nothing whatever; no suggestion at that time had ever been made to my knowledge, that there was any defect in the title of the Coos Bay land.

Q. Well, they proceeded to foreclose?

A. Yes.

Q. And then you and Mr. Rotch purchased the property?

A. Yes.

Q. At the foreclosure sale, for the benefit of the bondholders?

A. Yes.

Q. How did it happen you and Mr. Rotch purchased at the sale instead of you and Mr. Mandell? Had Mandell died?

A. No.

Q. When did he die?

A. He died subsequently to that; I think Mr. Rotch died before Mr. Mandell died. They were the trustees and naturally the committee of bondholders for the purchase would be different parties.

Q. So it was specially by arrangement among the bondholders that you and Mr. Rotch were appointed?

A. Yes.

Q. And you received the conveyance?

A. From the court.

Q. At that time, Mr. Crapo, had you any knowledge whatever of the limitation in the original Act of Congress?

A. None whatever.

Q. Did Mr. Rotch?

A. I am sure he did not.

Q. You were constantly with him?

A. Oh, yes.

Q. What were your relations with Mr. Rotch?

A. In business and socially, very intimate.

Q. You knew of these matters?

A. Yes.

Q. And Mr. Rotch is dead?

A. Yes.

Q. When did he die?

A. In 1893.

Q. Then the Southern Oregon Company was organized out of the bondholders?

A. The Southern Oregon Company was organized to take this property.

Q. And you made conveyance?

A. Yes; made conveyance to the Southern Oregon Company.

Q. And at the time you made that conveyance, which was on the 14th day of December, 1887, had you any knowledge up to that time of this limitation?

A. None whatever.

Q. Or any defect in the title?

A. No.

Q. Had Mr. Rotch, as far as you know.

A. No.

Q. Did the persons who composed the bondholders of the Southern Oregon Company have any?

A. No, I think not; I don't think it is possible that they could have known.

Q. Do you remember what the arrangement was in the organization of the Southern Oregon Company as to what the bondholders were to receive in the stock of the Southern Oregon Company?

A. Well, the Southern Oregon Company was organized with its capital stock fixed at \$1,500,000; the bondholders received ten shares of stock for each

\$1,000 bond in the Southern Oregon Company upon the payment of an assessment of \$50 or \$100, I don't recall which; but there was an assessment made which furnished some ready cash.

Q. To pay the expenses of foreclosure, I suppose. Anything else?

A. Yes; the money passed through the hands, and all the accounting, etc., of Prosper W. Smith, who was the treasurer; but that was the fact. When that distribution was made there was left in his hands—it didn't take the whole million and a half; it took about one million two hundred and odd thousands, so there was some—

Q. \$250,000?

A. \$260,000 or \$270,000 that was left, what we called treasury stock; the whole million and a half was not issued; the only issue was enough to satisfy the bondholders and the balance was not issued except it was issued at the time in the name of William J. Rotch and William W. Crapo, trustees.

Q. What did you do with it?

A. Afterwards we transferred that to the Southern Oregon Company.

Q. You gave the treasury stock?

A. We gave the treasury stock.

Q. Now when was the first time that you ever heard of the limitation in the original Act of Congress which was not incorporated in the patents?

A. It was about the time of the Nichols suit.

Q. What was that suit?

A. A man named Nichols had tendered to the

Southern Oregon Company \$400 and demanded a deed of a certain specified 160 acres of land.

Q. Can you tell about what time that was?

A. I should say it was seven or eight years ago.

Q. 1903 or 1904?

A. Yes.

Q. Up to that time you had never heard of this limitation?

A. That was the first intimation I had of it when that suit was brought.

Q. When was that suit?

A. The record will give that, to the best of my impression.

Q. That suit you say this Nichols brought—

A. Nichols was the plaintiff.

Q. He had made a tender?

A. He had tendered \$400, which was \$2.50 an acre, for 160 acres of land specified, and the land he wanted was, of course, a choice section, and there was a multitude of other people who also made their tenders.

Q. What became of them?

A. One was Senator Tillman, of South Carolina, by the way, but the only suit brought was by this man Nichols.

Q. What became of it?

A. It was tried and it was the decision of the judge — Bellinger, I believe — a circuit judge; he dismissed the petition; it was in favor of the defendant, the Southern Oregon corporation.

Q. It was through that this first came to your observation, through that agitation?

A. Yes.

Q. Mr. Rotch died when?

A. In 1893.

Q. So he could not have heard anything of it?

A. No.

Q. At the time of his death?

A. No.

Q. Now, Mr. Crapo, I want to put one or two direct questions on account of the allegations of that bill brought by the Government of the United States. Was the alleged indebtedness which was the basis of the mortgage fictitious, feigned and untrue?

A. That is not true; it was not fictitious.

Q. 'Feigned and untrue,' the United States alleges that. What do you say to that?

A. I say it is not correct.

Q. What was it?

A. It was the expenditure of a large amount of money.

Q. Actual value?

A. Actual value; I know my investment of money was actual.

Q. Was it made for the purpose, made and foreclosed with the intent and hope that thereby the limitation of the Act of Congress might be avoided and defeated?

A. It is not so.

Q. Did it have anything to do with it whatever?

A. None; the purpose was to save to the bondholders all we could get from the property.

Q. Was there any justification, so far as you know, for any such allegation in the bill brought by the United States of America?

A. None whatever.

Q. These bonds were held how generally? That is, what citizens of what states owned them?

A. Why, the largest holdings were here, I suppose, in New Bedford; there were some in Wareham and on the Cape, some in Boston, quite a number in Maine, some in New York. I speak of that, knowing that the bonds came through my channel in distributing the stock.

Q. The stock that was distributed for the bonds you had to sign the certificates?

A. Yes, or under my direction.

Q. So far as you know, they were substantial?

A. All *bona fide*.

Q. And you have stated all the knowledge or participation which you had in the original purchase by Captain Besse from the Crocker-Huntington syndicate?

A. I have.

Q. Have you at any time done any act or made any admission that this title was subject to the limitation of the Act of Congress?

A. No, I have not.

Q. Or have you ever done any act or made any attempt to conceal from the United States the alleged violation of the limitation?

A. None whatever.

Q. Was any act that you have ever done in connection with this company, the Southern Oregon Improvement Company, ever done with the purpose of concealing any such limitation from the United States?

A. Never; no, none whatever.

Q. Are you now interested in the Southern Oregon Company?

A. I have no financial interest in the company, either as stockholder or as creditor, absolutely no pecuniary interest in the Southern Oregon Company or in this company.

Q. I ask you now whether you had any interest whatever in the stock of the Oregon Southern Company, or ever had any interest in the stock of the Oregon Southern Improvement Company?

A. No.

Q. None whatever?

A. None.

The witness further testified that before the Southern Oregon Improvement Company invested in the lands he caused an experienced timber cruiser, by the name of Foster, to visit the lands, examine them and make a report to him and his associates. He further said that only a sufficient amount of stock was issued by the Southern Oregon Company to satisfy the bondholders of the Oregon Southern Improvement Company."

William Rotch was treasurer and assistant sec-

retary of the company from 1883 to 1884. His deposition was taken and he explains fully the organization of the Oregon Southern Improvement Company, the issuing of bonds, the mortgage to the Boston Safe Deposit Company and the general dealings, beginning with the purchase by Besse and ending with the foreclosure proceedings in the United States Court. His testimony is that of a man of capacity and shows that he fully understood and remembered the various transactions connected with this property in the early days. We quote his testimony as found on pages 260 to 275 of printed Abstract:

“That he is by profession a civil engineer, having obtained his degree in Paris in 1869; that from that time up to about ten years ago he was actively engaged as an engineer in railroad construction and other engineering work; that he still acts as consulting engineer, but is not in the active practice. That he was first connected with the Oregon Southern Improvement Company in 1883. That the Oregon Southern Improvement Company was organized at first by Captain Wm. H. Besse, who was a retired ship master in New Bedford, and who had commanded a number of ships, and the father of witness—Wm. J. Rotch—was interested. Witness’s father, Wm. J. Rotch, was one of the largest subscribers to the securities of the Oregon Southern Improvement Company, and his partner, L. A. Plummer, subscribed an equal amount. Witness testified that he became an officer in the Oregon Southern

Improvement Company, to wit, treasurer and assistant secretary, from April, 1883, to August, 1884. The office of the company was in the witness's office in Boston. Witness kept the books, or accounts, of the company as treasurer. The last time he saw them was in 1884, when he turned them over to his successor, Prosper W. Smith, and he has not seen them since that. During the year 1883 the witness received subscriptions from various people who were to take bonds of the Oregon Southern Improvement Company. Witness received during 1883 cash subscriptions to the amount of \$177,000. The mortgage was executed by the Oregon Southern Improvement Company to the Boston Safe Deposit & Trust Company—two mortgages—to secure the bonds of the company. The mortgage was dated January 1, 1884, and was executed about April, 1884. There was a delay from the time of the execution of the bonds up to the time of their delivery, on account of having a supplemental mortgage issued, because the land lay in two counties. Witness was treasurer when the bonds were ready for distribution. The bonds were delivered to the persons who paid in the money on the subscriptions. The bonds were issued at 80 and carried an amount of stock in the company equal to the amount of the bonds. The company spent \$100,000 for a steamer called the 'Alki.' The company purchased lands of the Coos Bay Wagon Road Company while the witness was treasurer. The money did not pass directly through the witness's hands. The original subscriptions were not

sufficient to pay all the expenses of the company and to purchase this additional amount of land, and after preceding purchases of land had been paid for. A syndicate of six persons, who were all original subscribers, arranged to furnish the money for the purchase of the Coos Bay Wagon Road land and to receive bonds and stock on the same basis of the original subscription. Witness delivered the bonds and stock of the company to the syndicate in return for the land. This includes all of the land except the 30,000 acres sold to Miller and afterward to Huntington, Hopkins and Crocker. That was paid in cash, and amounted to \$30,000. This left the land known as the Coos Bay Company's land 60,000 acres, which was paid for at \$1.50 an acre, making \$90,000—in all for the Coos Bay Company's land \$120,000. No bonds were ever issued except to subscribers and on the basis of 80 per cent of the par value.

Concerning the business of the Oregon Southern Improvement Company and its failure, this witness says:

Q. 70. Will you tell us a little, Mr. Rotch, about the business of the company while you were treasurer—what business it was engaged in?

A. Captain Besse, in his command of ships from New Bedford, had occasion to visit the Pacific Coast on many occasions, and he noticed that the harbor at Coos Bay, in the southern part of Oregon, appeared to be a very attractive harbor, and he had discovered that the timber on the land in that vicin-

ity, in the vicinity of Empire City, which is located on Coos Bay, and farther to the north, was very well wooded, and that the timber was apparently very valuable. He organized this company with the special purpose of buying that land, or some of it, building a mill, a large sawmill, constructing a railroad and operating it, taking the timber in a steamer and also in schooners to be chartered, to San Francisco and other points for sale. There was also coal on some of the Luce land—we called it the Luce land—bought from a man named Luce.

Q. 71. Where was that located?

A. In the vicinity of Empire City, on the shore of Coos Bay. Those coal deposits were considered quite valuable on that land.

Q. 72. Did the company have an agent in Empire City?

A. Yes.

Q. 73. And was he at work developing the resources of the company there?

A. Yes; J. N. Knowles was the first agent.

Q. 74. Did you send him money from time to time in order to pay the expenses of the work done in Oregon?

A. I did, yes; I sent him \$75,000 at one time and smaller amounts at other times.

Q. 75. Going back to the mortgage for a moment, Mr. Rotch, do you remember the amount of bonds authorized?

A. Two millions.

Q. 76. And those were what, six per cent bonds?

A. They were six per cent bonds.

Q. 77. When were the first coupons due?

A. The first coupon was due six months after the date of the bonds. That would be July 1, 1884.

Q. 78. When July 1 came did you have money enough to pay the interest on those bonds?

A. No, we didn't.

Q. 79. What did you do?

A. The company didn't wish to have a default if it was possible to avoid it, and many of the larger subscribers were asked to take bonds for their coupons. They did this. But to the best of my recollection a number of the bondholders had their coupons paid in cash.

Q. 80. Were all the coupons then paid either in cash or else by the owners taking bonds?

A. They were, to the best of my recollection.

Q. 81. Were you an owner of bonds yourself, Mr. Rotch?

A. Yes; I subscribed to \$5,000 myself and paid for them \$4,000, with 50 shares of stock, I should say.

Q. 82. Now, interest was next payable on January 1, 1885?

A. Yes.

Q. 83. Was that interest paid?

A. No, it was not.

Q. 84. And was interest ever paid after July 1, 1884?

A. No, to the best of my recollection nothing

was paid. I know I got no payment on my coupons and I don't think anybody did.

Q. 85. After you ceased to hold the office of treasurer and assistant secretary, which I understand was in August, 1884?

A. Yes.

Q. 86. What connection did you have with the affairs of the company?

A. I had no official connection. My connection was a bondholder and stockholder and representing the large interest which my father had, which was one of the largest, if not the largest interest.

Q. 87. Could you state roughly about what his investment amounted to?

A. It was about \$100,000 finally.

Q. 88. Who succeeded you as treasurer?

A. Prosper W. Smith.

Q. 89. And who succeeded Captain Besse as president?

A. Elijah Smith; they were brothers.

Q. 90. Who were they?

A. They were brothers who had got their early business education in New Bedford, and they afterwards moved to Boston, where Prosper Smith remained until his death, but Elijah Smith went to New York and other places and to the Pacific Coast, and he lived in a great many places all over the country.

Q. 91. Were you well acquainted with those two gentlemen?

A. Yes, very well acquainted. I had been ac-

quainted with them in early life and all my life I knew them well.

Q. 92. After you ceased to be treasurer, was it your custom to consult them as to the affairs of the company?

A. Yes.

Q. 93. Did you keep track of the affairs of the company in a general way?

A. I went into the office of the company very frequently, both in my own interest and as representing my father. I kept in pretty constant touch with the affairs of the company.

Q. 94. Were you also acquainted with Mr. W. W. Crapo?

A. I was very well acquainted with him—of the firm of Crapo, Clifford & Prescott of New Bedford.

Q. 95. It has appeared, has it not, Mr. Rotch, that your father lived in New Bedford?

A. Yes.

Q. 96. And you were born there?

A. I was born there.

Q. 97. And lived there until you came to Boston in 1880?

A. No; after I graduated at Harvard College I went abroad, in 1865, and graduated from the Ecole Centrale in 1869. Then I came back and remained in New Bedford only about a year and a half, and I went to Fall River and built the Fall River water works, and remained there until 1880. Since 1880 I have been in Boston.

Q. 98. Your earliest associations were with New Bedford?

A. Yes.

Q. 99. And with New Bedford people?

A. Oh, yes; William W. Crapo lived for a number of years in one of my father's houses, which he rented.

Q. 100. Can you name some of the other large investors with whom you were acquainted?

A. Leander A. Plummer, Alexander H. Seabury, George S. Homer.

Q. 101. Were they of New Bedford?

A. All of New Bedford.

Q. 102. Were these gentlemen all then of standing in the community?

A. They were, yes; they were of high standing, all of them, in New Bedford. Most of them had made their money in shipping, the whale fishery, and their fathers before them had left them money from this same source.

Q. 103. Now, do you remember, Mr. Rotch, that this mortgage was foreclosed?

A. I do.

Q. 104. And about when, do you recall?

A. Well, it was about 1887. The proceedings may have begun in 1886, but I think the foreclosure was in 1887.

Q. 105. Do you recall that the trustee, the Boston Safe Deposit & Trust Company, resigned?

A. Yes.

Q. 106. And that William J. Rotch and Edward D. Mandell became trustees in its stead?

A. Yes; Edward D. Mandell was one of the trustees of Hettie Green's property.

Q. 107. Now, you say that you kept pretty close track of the affairs of the corporation on account of your own interest and on account of your father's interest?

A. I did.

Q. 108. Can you tell us why that foreclosure took place, Mr. Rotch?

A. Because the company was unable to pay its obligations.

Q. 109. Was there any other reason that you know of?

A. It was unable to pay its obligations and could obtain no more money to carry on this property.

Q. 110. Were you familiar with the foreclosure proceedings; the course of the foreclosure proceedings?

A. I was, to a great extent.

Q. 111. And do you remember who purchased the property at the foreclosure sale?

A. The property was purchased by, I think, my father and William W. Crapo.

Q. 112. And did they purchase in their own right or for somebody else?

A. No; they were acting for the bondholders in general.

Q. 113. And after they purchased the property was it transferred to a new company?

A. It was.

Q. 114. And what company was that?

A. The Southern Oregon Company.

Q. 115. And that is the defendant in this action, as you understand it?

A. Yes.

Q. 116. Do you remember what stock in the new company was issued to the bondholders, what amount of stock?

A. Yes.

Q. 117. Will you tell us, please?

A. The stockholders in the new Southern Oregon Company, which purchased the property, received a little more stock than was represented by the par value of the bonds. I know I had \$5,000 of the bonds. For the reorganization expenses I paid \$500 and other bondholders paid at the same ratio. That is, \$100 for each thousand-dollar bond. I received 51 and a fraction shares of stock in the Southern Oregon Company and other bondholders received practically the same proportionate amount.

Q. 118. Were there any bonds of that latter company?

A. No.

Q. 119. And that, you say, was about 1887?

A. 1887.

Q. 120. Now, Mr. Rotch, returning to the land which came from the Coos Bay Wagon Road Company, including the Crocker purchase, which was

originally a part of the same tract, both those tracts were purchased while you were treasurer?

A. Yes.

Q. 121. Did the company have a report made to it on the title?

A. Yes.

Q. 122. Do you remember who made the report?

A. I can't remember who made it; there was an abstract of title which was very elaborate; I can't remember now who made it.

Q. 123. Some one in Oregon, probably?

A. Yes; our affairs in Oregon—

Q. 124. Well, never mind, Mr. Rotch. I am afraid we will go astray. If you can remember, tell us; if you can't remember, never mind.

A. Well, it was somebody that was recommended by Jonathan Bourne, Jr., who was afterwards senator from Oregon. He was acting as our agent.

Q. 125. You don't recall who it was?

A. No, I don't remember.

Q. 126. Was it reported to you that the company had a good title to this land?

Mr. Smith: I object to that as calling for hearsay testimony, not the best evidence, and ask that this objection be made in addition to the other objection which I have made.

A. Yes.

Q. 127. Did you know, Mr. Rotch, of any defect in the title?

A. I did not; I had no idea of it.

Q. 128. Did you know that this land came originally from the United States?

A. Yes.

Q. 129. Let me call your attention to the Act of Congress of March 3, 1869, which act provided for a grant of lands to the State of Oregon to aid in the construction of a road built subsequently by the Coos Bay Wagon Road Company, and especially to this provision in the act:

‘Provided, further, that the grant of lands hereby made shall be upon the condition that the land shall be sold to any one person only in quantities not greater than one quarter-section and for a price not exceeding \$2.50 per acre.’

At the time of the purchase of those lands did you have any knowledge of that provision in the Act of Congress?

A. No; I never heard anything about it until—

Q. 130. Let us take one step at a time. At the time of the purchase, did you have any such knowledge?

A. No, I had no idea of it; it was never mentioned.

Q. 131. At the time the mortgage was made and executed did you have any such knowledge?

A. No.

Q. 132. Were you one of the officers of the company who executed the mortgage on its behalf?

A. Yes.

Q. 133. Did you have any knowledge of that

provision in the act at the time of the foreclosure proceedings?

A. No.

Q. 134. When did you first obtain any knowledge as to that provision?

A. It was perhaps six or seven years ago; I can't remember exactly.

Q. 135. And how did that happen, Mr. Rotch? Do you remember?

A. The company, Southern Oregon Company, was trying to sell its land. It obtained what was considered a good offer, and \$60,000 was paid by the prospective purchaser to bind the bargain. It was reported to the company later that this prospective purchaser had discovered some flaw in the title and he refused to pay any more. The \$60,000 was forfeited to the company and retained by the company. Then I had many interviews with Prosper Smith and Elijah Smith, who then explained to me that it was claimed that people had a right to take a quarter-section and pay \$2.50 an acre. That was the first time I ever heard anything about it.

Q. 136. And that, you say, was six or seven years ago?

A. I can't remember exactly; I think it must have been.

Q. 137. It was, at any rate, long after the foreclosure?

A. Yes; I know it was not ten years ago, but I can't remember the exact date now.

Q. 138. Did you ever hear anything stated from

your associates in the company or from the bondholders or stockholders which would lead you to believe that they had any knowledge of such a provision?

Mr. Smith: I object to this especially as calling for a mere conclusion of the witness and not a statement of fact.

(The pending question, No. 138, is read.)

A. No, I never did.

Q. 139. When the mortgage to the Boston Safe Deposit & Trust Company was given, Mr. Rotch, was there any intention on the part of the company or its officers to suffer a foreclosure later in order to get rid of this proviso in the act to which I have referred?

Mr. Smith: I object to this especially for the reason that it calls for a mere conclusion.

A. No; there was nothing of the kind.

Q. 140. Did you ever hear any such suggestion made by any of the officers or persons interested in the company?

A. Never.

Q. 141. Did you hear of any such plan at a later period when the foreclosure proceedings were actually started?

A. No.

Q. 142. Have you any financial interest in the Southern Oregon Company, Mr. Rotch, at the present time?

A. None.

Q. 143. When did you part with your interest?

A. In 1910 I sold my stock and the stock belonging to the estate of my father and the stock belonging to all of my sisters, who had received some from my father's estate, to Elijah Smith. The money was paid by Kidder, Peabody & Co.

Q. 144. You were executor of your father's estate at that time?

A. Yes.

Q. 145. And acted as executor and agent for your sisters?

A. Yes.

Q. 146. So you have no stock and none of your family have stock, so far as you know?

A. None of the family has any stock today.

Q. 147. There is one more matter, Mr. Rotch, to which I wish to call your attention. Do you remember that at a meeting of the directors while you were treasurer a vote was passed authorizing the issuing of 2,000 shares of stock to Captain William H. Besse for his services?

A. Yes, I kept the minutes of the meeting and I remember that that vote was passed, but there was—

Q. 148. Was there any condition attached to that vote?

A. There was a condition.

Q. 149. Will you state what that condition was?

A. It was voted to issue 2,000 shares of stock to Captain Besse for his services in organizing the company and obtaining this land, which was supposed to be very valuable. The 2,000 were voted to him provided the issue of these 2,000 shares should be

approved and ratified by a committee of three men.

Q. 150. And who were the three, do you remember?

A. William W. Crapo was one; I can't remember just who all three were. I think my father was one. William W. Crapo. I can't remember the other one.

Q. 151. Your father and William W. Crapo were two of the three?

A. Yes, but I can't remember the other one.

Q. 152. Did they approve of the issue?

A. They did not.

Q. 153. And was that stock ever issued to Captain Besse?

A. It was never issued."

Robert E. Shine was in the employ of the company from 1888 to 1911 as bookkeeper, secretary and local manager. On the question of notice of the conditions in the granting act he says (pages 296 to 297, printed Abstract):

"Q. I will ask you to state whether during your time there in the employ of the company you heard of any defect in the title of the Southern Oregon Company, by reason of a clause in the grant to the company regarding the sale of its lands?

A. Not until about the time the Nichols suit was brought and what we call the Seabrook and McKnight gamble was started.

Q. That was about 1905, was it?

A. I think so.

Q. It was about the time of the Nichols suit, anyway. The record shows that. Prior to that you say you heard nothing about it?

A. No, sir. At that time it came like a bolt out of a clear sky, and was a surprise to the company."

We supplement this with the elaborate abstract of title prepared by Hazard & Wilson, attorneys and abstractors (Defendant's Exhibits 207-8), and the opinion of Hazard & Wilson (Defendant's Exhibits 209-211-213-219).

Loggie, complainant's star witness, testifies to the ability of Hazard & Wilson and says this abstract and opinion was in the company's possession in his time. It will be noted that in the opinion, while with great care every defect discovered in the title is pointed out, this pretended limitation is not referred to. That the company dealt with this title in good faith and reputable attorneys certified the title to be good appears from the testimony of M. J. Kinney, witness on behalf of the Government, who says (pages 320, 321 and 322, printed Abstract) :

"Q. During the course of your business was your attention called to the land known as the Coos Bay Wagon Road grant lands?

A. Yes, sir.

Q. Extending from Roseburg to Coos Bay?

A. Yes.

Q. When was that first brought to your attention?

A. In January or February of 1902.

Q. I mean the very first time?

A. The first time that the Coos Bay property was brought to my attention was in—I will get it in a few minutes—I think it was 1870; it may have been 1872.

Q. In what way was it brought to your attention?

A. Father spoke to me about it, the Southern Oregon land grant—or as it was at that time, it was the Coos Bay Wagon Road grant, and he thought at the price that he was offered it by Hen Owens of Roseburg it was a good buy, and we considered it. I was living then in San Francisco. I had some money and had enough to pay for my part of it.

Q. At what price was it offered at that time?

A. It was offered to us at \$30,000.

Q. Was that for the entire grant?

A. There was about 100,000 acres, but I do not remember the exact amount. The entire land grant at that time. Hen Owens and old Hamilton was in it.

Q. Did you negotiate for its purchase at that price?

A. Yes, sir.

Q. How far did the negotiations proceed; state fully.

A. Well, I came from San Francisco and my father and Mr. Gray examined into the land; I was living at San Francisco and—

Q. What Mr. Gray; what is his full name?

A. I think his full name is G. W. Gray.

Q. Where did he live?

A. He lived in Salem.

Q. Is he now living?

A. No, he is not living. I think his son is living in Seattle. He has a daughter living here in Portland, and each was to take one-third, and my father and I agreed to take one-third each and Mr. Gray was to take one-third, and after having it under consideration for some time, looking into it, Mr. Gray said that the taxes would ruin us, and on account of that we turned it down, or he turned down his third part of it.

Q. Mr. Gray declining to go into it, did you and your father further consider it?

A. No, we did not."

Mr. Kinney testifies that he had an option later on and purchased the property from the Southern Oregon Company, paying \$60,000 down, balance to be paid on deferred payments, but he failed to conclude the transaction and the deal fell through because afterwards the title was questioned, but at the time he purchased it, on or about the 15th day of January, 1903, his attorneys advised him that the title was good. We quote from page 23 of the testimony:

"Q. At the time you bought did you have the advice of attorneys as to the title?

A. I did; I paid Mr. Greene \$2,300 for his opinion.

Q. Did they advise you of this condition in the grant?

A. They did not.

Q. Providing for the sale of the land in quarter-section tracts at \$2.50 an acre?

A. *They did not. They assured me the title was perfect.*"

LANDS COULD NOT BE SOLD IN 160-ACRE
TRACTS—THE PRETENDED CONDITION
IS THEREFORE OBNOXIOUS TO
THE GRANT AND VOID.

The question whether the land embraced in the grant could be sold in 160-acre tracts becomes important in this case, because if it should appear that such sales could not be made at all, then the pretended condition is obnoxious to the grant and void under all the authorities. That the land could not be thus sold is conclusively shown by the defendant's witnesses. We will not encumber this brief on the facts by quoting all the testimony, but will content ourselves by giving the pages where it may be found, quoting only sufficient testimony to give the court an idea of its general character. We refer the court to the testimony of T. W. Newland, who has lived in "Ten Mile," a part of the grant, ever since 1853. His testimony on the subject is found on pages 222, 223 and 224, printed Abstract:

"That he lived at Ten Mile, about eighteen miles southwest of Roseburg, and had lived there and in that vicinity since 1853. That he was familiar with the character of the land lying between Roseburg and the summit of the mountains, between Roseburg

and Coos Bay, and particularly with the Coos Bay Wagon Road Grant lands. That in his judgment, between 1869 and 1875, the said Coos Bay Wagon Road Grant lands, being the lands title to which is involved in this suit, could not be sold in 160-acre tracts to anyone. That he never heard of anyone wanting or offering anything for it. That land in that neighborhood and of that character was not generally called for until about 1900, when the land speculators began to come in there. This demand for land was made by timber speculators and not for settlement, except in small tracts where it could be cultivated.

Touching the character of the land and its value, this witness testified as follows:

Q. I will ask you to state to the examiner what proportion of that land, in your judgment, is cultivatable land and what proportion is rocky and barren?

A. Well, take the Coos Bay road land, that is what you want to know—there is Government land along where the road is laid—at that time it was—all that wasn't occupied then was all poor quality and wasn't, *I don't think, one good acre out of a thousand would be farm land to me*; it is hilly, little spots where there is a creek or two on the creek bottom that is good and then there is so much that is no good at all.

Q. I will ask you now, Mr. Newland, if in 1869 to 1875 that land that you designate so could be sold in 160-acre tracts to anybody for any purpose?

Mr. Smith: Objected to as immaterial, irrelevant and incompetent and ask that these objections apply to all questions put to this witness.

Mr. Gearin: Yes, that will apply to everything?

Q. What do you say as to that, Mr. Newland?

A. Could it be sold?

Q. Yes.

A. I do not think so, because I do not know of anybody wanting it, or offering anything for it.

Q. Was it sold or taken by anybody up until about fifteen years ago?

A. Not that I know of. The first call for land in the hills was for the timber cruisers. They located fellows on good timber and poor timber and where there was not any at all.

Q. Well, when did that influx of people begin?

A. O! it seems to me it is something about fifteen years ago, twelve or fifteen.

Q. The land speculators brought them in there, did they?

A. Yes; timber cruisers, fellows hunting timber.

Q. And up to that time neither the Government land, nor the Coos Bay lands was taken up at all, was it, by anyone?

A. No, there was a whole lot lying vacant. I never heard or knew of anybody to take up the rough part. There was little places of course where it was taken up for a while and they could not make a living, and they would go again."

J. P. Stemler, a witness called for the defendant, testified as follows (p. 224, Printed Abstract) :

“That he lives at Myrtle Point. That he came there first in 1884 and lived there for twenty-five years, and took up a homestead and has remained there ever since. That he is familiar with the character of the land included in the grant of the Coos Bay Wagon Road Company’s grant—the lands to which title is involved in this suit. That ever since 1885 there was no demand for timber in that section of the country, or of the lands of the Coos Bay Wagon Road Company’s grant. That throughout that section of the country the timber was considered a nuisance and the settlers cut it down and burned it off to get rid of it and clear the land. That during the time he was there, from 1885, the timber land within the limits of the grant on the mountains could not be sold in 160 acre tracts to anyone at any figure.

He further said that he had heard the restrictive provisions of the grant mentioned among the people and read in the papers that the lands had to be sold at \$2.50 an acre, in tracts of 160 acres. That mountain timber land could not be sold in 160 acre or smaller tracts, but that he had never attempted to sell any such land except during the last three or four years. As to his knowledge of the character of the lands, he said that it was gained from traveling over the Wagon Road, from which but little of the land could be seen, because of the trees.”

W. Z. Cotton, a witness called for the defendant, testified as follows (pp. 225-6, Abstract of Record) :

“That he lives at Fairview, in the neighborhood of the Coos Bay Wagon Road Land Grant lands, and has lived there since 1870. That he took up a claim there in 1882. That he was familiar with the character of the land embraced in the Coos Bay Wagon Road Land Grant as to its being bottom land, or hill and timber land. That the greater proportion would be hill land. That there would not be over 20 per cent of it bottom land. That the hills are covered with timber. That during the early days, after he settled there in 1882, there was no demand for timber and no demand arose until about 1900. That in 1870 and for several years thereafter the timber land in the grant could not be sold in 160 acre tracts to anybody at any price. This witness further testified that he filed pre-emption claim on 120 acres in the neighborhood. That he held it for a few years and paid taxes on it; that he offered it for sale to anyone who would pay for making out the deed for the property (80 acres), and nobody would take it.”

John F. Hall, a witness on behalf of the defendant, testified as follows (pp. 226-7, printed Abstract) :

“That he is County Judge of Coos County and has been County Judge for eight years. That before that he was County Surveyor from 1882 to 1886.

That he came to settle in Coos County in 1869 before the wagon road was built. That he settled on the middle fork of the Coquille, and in 1871 moved down to Coos Bay on the Isthmus Slough. That when he settled in there the only communication between Roseburg and Marshfield was by means of a pack trail over the mountains. That during the time and before the wagon road was built there was no mail communication except that the mail was carried once a week by a man on horseback. That during the years 1882 and 1886 he was Deputy Government Surveyor and surveyed on both sides of the Coos Bay Wagon Road Company's Grant, and generally throughout that country was familiar with the land and the character of it. That during the early years following his settlement in 1869 there was no demand for the timber land in the grant. That no demand arose for it until about 1885 or 1886.

I do not think that the mountain land where the heavy timber is, could have been sold in quarter section lots or smaller parcels for cash from 1870 up to '80. That between the years 1870 and 1880, he did not think the mountain land could have been sold at any price, but that after the lands had been transferred to the Oregon Southern Improvement Company, there were a number of people who wanted to purchase and were willing to pay \$2.50 an acre, but were unable to secure the land."

L. D. Smith, a witness on behalf of the defend-

ant, testified as follows (pp. 228-29, printed Abstract) :

“That he lives on Coos River in Coos County and has lived there since 1865, and was there when the Coos Bay Wagon Road Company’s wagon road was built. That prior to the building of that road the only communication between Marshfield and Roseburg was by a row boat or canoe from Marshfield to the head of South Coos River and by pack trail from there over the mountains to Roseburg. That there was no road over the mountains until the wagon road was built. That during the years from 1865 to the present he had been over a great portion of the country embraced within the limits of the grant and the adjoining country and was familiar with the character of the country and its soil, etc., and as to its being hilly or covered with timber, or otherwise. That there was bottom land on the grant and hilly, rocky and timber land. That the proportion of bottom land was very small. Witness could not even make a guess of the percentage of it. That the land along the creek bottoms was very good land and the balance, lying on the hills was timber land and some of it barren and rocky. That up to 1875 the land on the hills could not have been sold to anyone for any sum. That no one attempted to buy any of it or to take it up and it was not considered worth anything. That as to the timber, the principal desire of settlers was to burn it up and get rid of it, prior to 1883, there being no demand for it, but after that, a lively demand was developed. That he had

been over a portion of the lands embraced within the limits of the grant, but had never made an examination for the purpose of classifying it.”

Whereupon defendant and appellant called D. J. Thrift, who testified (pages 229-230, printed Abstract of Record), that he was County Assessor of Coos County and had been such for the last twelve years and has lived in Coos County for twenty-four years. That up to the year 1900 there was no demand for timber on the lands in the vicinity of Coos Bay Wagon Road Grant, or the lands embraced in the grant. That the first timber buyers came into the country about 1900. That up to that time there was no demand for the timber at all, except a small demand by local buyers and the lands up to that time had no marketable value. That in his judgment there would be possibly 3,000 acres of bottom land in the grant. The balance of the land might be designated timber land, part of it barren. About one-half a township would be barren and rocky. The balance of the grant outside of the bottom land and the barren, rocky worthless land, he designated as lands covered with timber and chiefly valued for timber. That the timber land prior to the advent of timber buyers about the year 1900 “was absolutely worthless, almost,” and was assessed as low as 10 cents an acre.

Whereupon defendant and appellant called J. D. Benham, who testified in substance as follows (pages 230-231, printed Abstract of Record) :

“That he lives at Fairview, in Coos County, and has lived there since 1875. That he has been over the lands of the Coos Bay Wagon Road Grant a great many times and is familiar with the nature of the country and the character of the land embraced in the grant. That the great body of the grant is timber land and only a small proportion bottom land. That from 1870 up to 1880 there was no demand for timber land in that county. The timber land could not, in that county, within the limits of the grant and adjoining lands, be sold to anybody for cash at any figure. That he did not know of anyone buying any, or attempting to buy any. That some of the timber land is barren and rocky, without even timber on it. That of late years there has grown up a demand for the timber and all the adjoining land, being timber land, has been taken for the timber.”

E. P. Mast, a witness *called on behalf of the complainant*, testified that he went into the Coos Bay country in 1872, bought his place from the company and had no trouble about it. As to the character of the land he says (pages 247-248, Abstract of Record) :

“A. Well, of course it is mountains and rocks and timber and everything else; of course only along the creeks and the river bottoms—it is all mountains and rocks and hills, of course.

Q. I will ask you to state, Mr. Mast, if in your judgment in 1872 or up to 1875 that land on the

mountain could be sold for real money to anybody?

A. *It could not have been sold to me them days for nothing; I would not have taken it as a gift.*

Q. Could it be sold in 160 acre tracts or smaller tracts to anybody for cash money?

A. Well, as far as I know they could not, because there was no demand for timber and the hills would not have been worth anything at all to a man living on them, there was nothing only them mountains and rocks, couldn't make anything out of it."

As to the ability to sell 160 acre tracts Robert E. Shine says (p. 296, printed Abstract) :

"Q. I will ask you to state whether or not in 1888 when you went there in the employ of the company, the land on the mountains—the timber land—could be sold in 160 acre tracts or smaller tracts to anybody at any price?

A. Not at any price, Mr. Gearin. Money was very scarce in those days, and there was no demand that I ever knew of for timber land."

J. A. Yoakam, answering as to the possibility of selling the land in 160-acre tracts, says (p. 283, printed Abstract) :

"Q. Now, Mr. Yoakam, after you got back a mile or a mile and a half from the sloughs or navigable waters where you could log advantageously, I will ask you if the balance of that grant running over to the hillside and being timbered and rocky could have been sold at that time for \$2.50 an acre

and in 160 acre tracts, or for any sum in any quantities?

A. I have been offered for that land—

Q. Answer yes or no.

A. The best way to answer, I have been offered \$1.00 an acre for any section I would take or half section or quarter section and—

Q. You can answer the question. Could it have been sold to anyone?

A. No, it could not. You could take up any timber anywhere, take up government land for nothing where it wasn't surveyed at all."

L. A. Lawhorn lives near McKinley, within the limits of the grant, and has lived there since 1861. His testimony on this subject is found on pages 231-232, printed Abstract.

H. W. Halverstott lives at Fairview, within the limits of the grant, and has lived there since 1873. His testimony on this subject is found on pages 232-233, printed Abstract.

George Norris lives at Fairview, within the limits of the grant, and has lived there since 1868. His testimony on this subject is found on pages 234-235, printed Abstract.

Albert E. Bettis lives in Fairview, within the limits of the grant, and has lived there since 1874. His testimony on this subject is found on pages 235-236, printed Abstract.

William Bettis lives at McKinley, within the

limits of the grant, and has lived there since 1874. His testimony on this subject is found on pages 237-238, printed Abstract.

J. C. Haynes lives at Myrtle Point, within the limits of the grant. Has lived there since March, 1859. His testimony on this subject is found on pages 238-239, printed Abstract.

L. E. Rose lives at Myrtle Point. Has lived there since 1890. His testimony on this subject is found on pages 240-241, printed Abstract.

J. J. Clinkenbeard lives on Coos River near mouth of Daniels Creek and has lived there since 1880. His testimony is found on pages 241-242, printed Abstract.

S. A. Gurney also lived on land included in the grant from 1853. His testimony with reference to this point is found on page 243, printed Abstract.

W. J. Coats lives at "Ten Mile." Has lived there since 1861. His testimony on this subject is found on pages 244-245, printed Abstract.

A. E. Bushnell lives at Reston, within the limits of the grant, and has lived there for 13 or 14 years. His testimony is found on pages 245-246, printed Abstract.

The Court will find on examination that all the witnesses above referred to testify to practically the same condition shown by the quoted testimony.

Of course this testimony does not apply to the lands in the bottoms along the creeks and streams and contiguous to the sloughs, Isthmus, Catching, etc. This portion of the grant was valuable, but its area was limited, a very small percentage of the whole grant consisting of bottom lands.

This testimony is conclusive and satisfies the mind that at the time of the grant, March 3, 1869, and for many years thereafter, this land, because of its character and location, could not be sold in 160 acre tracts to anyone at any price.

RECORDS OF LAND OFFICE.

If the reading of the testimony left any doubt in our mind, an examination of the records of the Roseburg Land Office would set that doubt at rest. We call the Court's attention to exhibits from one to fourteen. These exhibits, taken together, constitute a complete record of the Government's *even* sections within the boundaries of the grant. The original exhibits are not printed in the Abstract of Record but are here by order of the Court. For the Court's convenience we have tabulated the results deducible from these exhibits and present them herewith. They are identified by H. O. Pargeter (p. 315, printed Abstract) and the showing by townships is as follows:

TOWNSHIP 28 SOUTH, RANGE 7 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
4			1867	160	..
4			1909	80	..
4			1883	80	..
4	1913	1913	1913	40	..
4			1871	40	..
4			1870	40	..
6	1884	1889	1889	160	..
6			1889	40	..
6			1908	40	..
6			1871	160	..
6			1877	80	..
6			1900	80	..
6			1911	80	..
8			1908	80	..
8			1908	40	..
8			1908	40	..
8			1871	80	..
8			1901	160	..
8	1912	1913	....	...	80
8			1873	40	..
10			1868	160	..
10			1885	160	..
14	1909	1913	1913	99.48	..
14			1876	159.41	..
14			1913	40	..
14	1913	1913	....	...	80
14	1901	1904	1906	19.93	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
14			1865	241.38	..
18			1912	40	..
18			1876	160	..
18			1908	120	..
18	1907	1908	1906	160	..
18			1911	160	..
20	1910	1910	1910	160	..
20	1910	1912	....	...	160
20	1908	1912	1912	160	..
20			1898	160	..
22			1913	160	..
22			1872	40	..
22			1883	160	..
24			1873	240	..
24			1885	26.80	..
24			1908	26.80	..
24			1870	160	..
26			1865	160	..
26			1884	120	..
26			1910	40	..
26			1872	160	..
26			1891	80	..
26			1873	80	..
28			1864	240	..
28			1898	34	..
28			1872	270	..
28			1871	60	..
30			1909	160	..
30			1888	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
30	1872	80	..
32	1902	80	..
32	1872	40	..
32	1908	1908	.....	...	80
34	1870	161.92	..
34	1865	120	..
34	1865	266	..
34	1866	93	..

RECAPITULATION

Number of entries made prior to 1875	23
Number of entries made between 1875 and 1880..	3
Number of entries made between 1880 and 1890..	9
Number of entries made since 1890.....	26
<hr/>	
Total entries	61

TOWNSHIP 28 SOUTH, RANGE 8 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2	.....	.....	1878	158.63	..
2	.....	.....	1904	158.65	..
2	1903	1904	1907	120	..
2	1903	1904	1907	40	..
2	1877	1885	1890	160	..
4	1903	1903	1906	80	..
4	.....	.....	1906	80	..
4	1903	1903	1906	160	..
4	.....	.....	1906	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
4	1903	1903	1908	160	..
4	1903	1904	1906	80	..
4	1890	1890	1901	162.33	..
4	1889	1890	1901	200.16	..
4	....	....	1901	318.15	..
4	1903	1903	....	...	160
4	1890	1891	1901	320	..
4	1903	1903	1908	160	..
10	....	....	1909	120	..
10	1903	1903	....	...	80
10	1903	1903	1908	160	..
10	....	....	1885	160	..
10	1912	1913	1913	40	..
10	....	....	1887	80	..
12	....	....	1877	40	..
12	1879	1884	1891	160	..
12	....	....	1875	80	..
12	....	....	1906	160	..
12	....	....	1870	40	..
12	1902	1906	1909	120	..
14	....	....	1872	160	..
14	....	....	1865	320	..
14	....	....	1865	80	..
14	1910	1911	1912	80	..
18	1890	1891	1901	160	..
18	....	....	1901	160	..
18	1889	1889	1901	160	..
18	1890	1891	1901	160	..
20	....	....	1890	160	..

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
20			1904	160	..
20	1889	1890	1890	160	..
20			1890	160	..
22			1903	131.96	..
22			1873	120	..
22			1897	160	..
22	1908	1909	1913	40	..
22	1890	1891	1903	160	..
24	1890	1890		...	320
24			1872	80	..
24			1864	160	..
24			1870	40	..
24			1869	40	..
26	1890	1891	1903	160	..
26	1890	1891	1904	160	..
26	1890	1891	1904	160	..
26	1890	1891	1904	160	..
28	1890	1891	1904	160	..
28	1902	1902	1906	120	..
28	1899	1908	1909	120	..
28				...	40
28			1910	40	..
28	1890	1896	1903	160	..
30	1902	1907	1908	160	..
30			1903	160	..
30			1903	164.13	..
30			1897	160	..
32			1889	160	..
32			1887	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
32			1887	160	..
32	1893	1901	1902	160	..
34			1904	160	..
34	1890	1891	1903	160	..
34	1890	1891	1903	160	..
34	1890	1891	1907	160	..

RECAPITULATION

Number of entries made prior to 1875.....	10
Number of entries made between 1875 and 1880..	3
Number of entries made between 1880 and 1890..	5
Number of entries made since 1890.....	52
—	
Total entries	70

TOWNSHIP 29 SOUTH, RANGE 8 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2			1875	77.38	..
2			1889	153.91	..
2			1907	160	..
2			1910	40	..
2			1876	80	..
2			1907	120	..
4			1903	155.69	..
4			1903	114.35	..
4	1890	1890	1906	200	..
4			1890	160	..
6			1888	156.33	..

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
6			1871	161.54	..
6	1879	1880	1882	40	..
6			1893	40	..
6			1875	160	..
6			1898	40	..
6			1881	40	..
8			1890	160	..
8	1885	1892	1900	160	..
8			1871	120	..
8	1913	1913		...	40
8	1876	1877	1892	80	..
8			1892	80	..
8	1909	1910	1913	40	..
8	1902	1903	1907	160	..
8			1901	160	..
8			1895	160	..
8	1903	1906	1908	80	..
8				...	40
12	1878	1883	1908	80	..
12	1879	1883	1908	80	..
12	1903	1904	1906	160	..
12			1906	160	..
12			1881	80	..
12			1893	80	..
14			1871	160	..
14			1908	40	..
14			1876	160	..
14	1876	1879	1881	80	..
14			1890	40	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
14	1903	160	..
18	1864	320	..
18	320

RECAPITULATION

Number of entries made prior to 1875.....	4
Number of entries made between 1875 and 1880..	4
Number of entries made between 1880 and 1890..	9
Number of entries made since 1890.....	23
—	
Total entries	40

TOWNSHIP 28 SOUTH, RANGE 9 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2	.....	....	1890	163.11	..
2	1889	1889	1890	163.53	..
2	1889	1890	1890	160	..
2	1889	1890	1890	160	..
4	.....	....	1901	243.33	..
4	.....	....	1908	162.52	..
4	1904	1907	....	...	40
4	.....	....	1909	80	..
6	1889	1890	1907	164.20	..
6	.....	....	1890	165.32	..
6	.....	....	1890	160	..
6	.....	....	1890	171.76	..
8	1903	1903	1904	160	..
8	1903	1903	1904	160	..

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
8	1903	1903	1904	160	..
8	1903	1904	1904	160	..
10	1890	1891	1902	160	..
10	1902	1903	1904	160	..
10	1902	1903	1904	160	..
10	1890	1891	1903	160	..
12	1889	1890	1890	160	..
12 .....	....	....	1901	480	..
14	1889	1890	1890	160	..
14	1889	1890	1890	160	..
14	1889	1890	1890	160	..
14	1889	1890	1890	160	..
18 .....	....	....	1890	160	..
18 .....	....	....	1907	174.28	..
18	1889	1890	1890	175.32	..
18	1889	1890	1890	160	..
20	1890	1891	1901	120	..
20	1889	1890	1901	80	..
20	1890	1891	1901	80	..
20	1889	1890	1901	80	..
20	1890	1891	1904	80	..
20	1906	1907	1908	160	..
20 .....	....	....	1909	40	..
22	1890	1898	1900	160	..
22	1890	1898	1900	160	..
22	1889	1890	1901	160	..
22	1889	1890	1900	160	..
24	1889	1890	1890	160	..
24	1889	1890	1890	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
24	1889	1890	1890	160	..
24	1889	1890	1890	160	..
26	1890	1891	1900	160	..
26	1890	1891	1900	160	..
26	1890	1891	1900	160	..
26	1890	1891	1900	160	..
28	1890	1891	1900	160	..
28	1890	1891	1900	160	..
28	.....	.....	1890	160	..
28	.....	.....	1890	160	..
30	.....	.....	1908	167.27	..
30	1890	1891	1904	167.33	..
30	.....	.....	1890	174.64	..
30	.....	.....	1890	160	..
32	1889	1898	1900	160	..
32	.....	.....	1890	160	..
32	.....	.....	1890	160	..
32	1889	1898	1900	160	..
34	.....	.....	1900	160	..
34	1890	1891	1900	160	..
34	1890	1890	1900	160	..
34	.....	.....	1890	160	..

RECAPITULATION

Number of entries made prior to 1875.....	0
Number of entries made between 1875 and 1880..	0
Number of entries made between 1880 and 1890..	0
Number of entries made since 1890, not cancelled.	65
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Total entries	65

TOWNSHIP 29 SOUTH, RANGE 9 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2			1902	157.98	..
2			1902	159.18	..
2			1903	120	..
2			1888	40	..
2	1902	1902	1909	160	..
4	1889	1889	1900	160	..
4	1889	1889	1900	154.07	..
4			1900	160	..
4			1889	160	..
6			1890	153.40	..
6	1890	1890	1907	169.92	..
6			1890	173.29	..
6			1890	160	..
8			1890	40	..
8	1889	1889	1889	120	..
8			1890	160	..
6	1890	1898	1900	160	..
8	1902	1902	1903	160	..
10	1902	1902	1906	160	..
10			1890	120	..
10	1889	1890	1890	160	..
10	1889	1889	1890	40	..
10			1903	160	..
12			1880	160	..
12			1870	120	..
12			1886	160	..
12			1870	200	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
14			1890	160	..
14	1892	1899	1908	160	..
14			1908	40	..
14			1902	120	..
14			1903	160	..
14			1910	160	..
16	1910	1912	1913	80	..
16	1902	1902	1903	131.11	..
16	1911	1912	1913	160	..
16	1910	1912	1912	168.37	..
16			1909	80	..

RECAPITULATION

Number of entries made prior to 1875.....	2
Number of entries made between 1875 and 1880..	2
Number of entries made between 1880 and 1890..	2
Number of entries made since 1890.....	35
—	
Total entries	41

TOWNSHIP 28 SOUTH, RANGE 10 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2			1907	161.36	..
2			1908	162.12	..
2			1881	160	..
4	1906	1907	1909	165.60	..
4	1903	1904	1908	166.40	..
4	1907	1908	1909	80	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
4	1890	1891	1907	80	..
4	1908	1908	....	...	80
4	1903	1904	1907	80	..
6	.....	.....	.....	...	135.42
6	.....	.....	1908	84.90	..
6	.....	.....	1907	155.46	..
6	.....	.....	1884	84.54	..
6	1880	1880	1882	160	..
6	.....	.....	1909	40	..
8	.....	.....	1907	80	..
8	1890	1890	....	160	..
8	1906	1906	1907	80	..
8	1906	1907	1907	60	..
10	.....	.....	1903	80	..
10	.....	.....	1909	80	..
10	.....	.....	1909	80	..
10	.....	.....	1876	80	..
10	.....	.....	1876	160	..
10	.....	.....	1879	160	..
12	.....	.....	1907	80	..
12	.....	.....	1881	160	..
12	.....	.....	.....	...	40
12	.....	.....	1902	80	..
12	1902	1902	1903	160	..
12	.....	.....	1907	120	..
14	1903	1904	1907	160	..
14	1890	1891	....	...	80
14	1908	1908	....	...	80
14	1908	1908	....	...	80

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
14	1906	1907	.....	...	80
14	1903	1904	1907	160	..
18	1890	1891	1907	160	..
18	1890	1891	.....	...	160
18	1890	1891	.....	...	160
18	1903	1904	.....	...	160
18	1903	1904	1907	160	..
20	1903	1904	1907	160	..
20	1903	1904	1907	120	..
20	.....	.....	.....	...	40
20	1890	1891	.....	...	160
20	1890	1891	.....	...	160
22	1903	1904	1907	...	160
22	.....	.....	1907	160	..
22	1890	1891	.....	...	160
22	1890	1891	1903	...	160
24	1890	1891	.....	...	160
24	.....	.....	1891	160	..
24	.....	.....	1891	160	..
24	.....	.....	1891	160	..
26	.....	.....	1891	160	..
26	1890	1891	1903	160	..
26	1890	1890	1907	160	..
26	1908	1908	1913	160	..
28	1890	1901	.....	...	360
28	1901	1901	.....	...	80
28	1901	1901	1904	200	..
30	1902	1911	1913	160	..
30	.....	.....	.....	...	480

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
32	1890	1891	1908	40	..
32	1890	1891	1909	40	..
32	1906	1907	....	...	80
32	1904	1904	1906	160	..
32	1901	1901	1901	160	..
32	1891	1891	1901	160	..
34	1890	1891	....	...	280
34	1890	1891	1903	160	..
34	1890	1891	1903	80	..
34	1904	1904	....	...	80
34	1890	1891	....	...	40

RECAPITULATION

Number of entries made prior to 1875.....	0
Number of entries made between 1875 and 1880..	3
Number of entries made between 1880 and 1890..	4
Number of entries made since 1890.....	47
—	
Total entries	54

TOWNSHIP 29 SOUTH, RANGE 10 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2	1902	1904	....	...	280.58
2	....	....	1894	161.52	..
2	....	....	1904	200.94	..
4	1893	1893	1903	161.96	..
4	1893	1893	1913	164.25	..
4	1893	1893	1912	161.43	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
4	1893	1893	1908	160	..
6	1903	1908	....	...	160
6	1902	1910	....	...	120.48
6	....	....	....	...	361.75
8	1893	1893	1912	160	..
8	1895	1896	1908	160	..
8	1895	1896	1912	160	..
8	1895	1896	1903	160	..
10	1908	1908	1913	160	..
10	1908	1908	1913	160	..
10	....	....	1908	160	..
10	1908	1908	1912	160	..
12	1893	1893	1908	160	..
12	1894	1894	1903	160	..
12	1893	1894	....	...	160
12	1893	1894	1903	160	..
14	1893	1894	....	...	160
14	1893	1894	1908	160	..
14	1907	1908	....	160	..
14	....	....	1889	160	..
18	1893	1894	1907	160	..
18	....	....	1901	120	..
18	....	....	1904	40	..
18	....	....	1903	160	..
18	....	....	....	...	160

RECAPITULATION

Number of entries made prior to 1875.....	0
Number of entries made between 1875 and 1880..	0
Number of entries made between 1880 and 1890..	1
Number of entries made since 1890.....	22
<hr/>	
Total entries	23

TOWNSHIP 27 SOUTH, RANGE 11 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
4	1889	88.57	..
4	1884	87.33	..
4	1906	160	..
4	1902	160	..
6	1891	162.92	..
6	1903	81.21	..
6	1901	80.71	..
6	1884	162.87	..
6	1877	160	..
8	1901	160	..
8	1901	160	..
8	1901	160	..
8	1885	160	..
18	1878	1880	1888	161.70	..
18	1878	161.66	..
18	1907	120	..
18	1876	1880	1881	81.62	..
18	1885	121.58	..
20	1902	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
20	1902	1903	1903	160	..
20	.....	....	1902	160	..
20	.....	....	1902	160	..
22	.....	....	1900	160	..
22	.....	....	1903	160	..
28	.....	....	1898	80	..
28	.....	....	1885	160	..
28	1880	1882	1888	120	..
28	1885	1886	1888	40	..
28	1878	1882	1885	40	..
28	1876	1878	1885	120	..
28	.....	....	1902	80	..
30	.....	....	1902	160	..
30	1897	1903	1904	160	..
30	.....	....	1902	160	..
30	.....	....	1902	160	..
32	.....	....	1903	80	..
32	.....	....	1889	80	..
32	.....	....	1903	80	..
32	1902	1904	1904	80	..
32	1890	1891	1903	40	..
32	1885	1888	1891	160	..
32	.....	....	1889	40	..
32	.....	....	1878	80	..
34	.....	....	1884	160	..
34	1888	1890	1895	160	..
34	.....	....	1880	40	..
34	.....	....	1880	160	..
34	1902	1907	1912	120	..

RECAPITULATION

Number of entries made prior to 1875.....	0
Number of entries made between 1875 and 1880..	3
Number of entries made between 1880 and 1890..	17
Number of entries made since 1890.....	28
—	
Total entries	48

TOWNSHIP 28 SOUTH, RANGE 11 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
2 .....		....	1891	153.11	..
2	1891	1899	1906	143.71	..
2 .....		....	1907	160	..
2 .....		....	1903	160	..
4 .....		....	1880	37.18	..
4 .....		....	1878	155.41	..
4 .....		....	1865	158.23	..
4 .....		....	1890	120	..
4 .....		....	1908	40	..
4 .....		....	1904	120	..
6 .....		....	1885	84.32	..
6	1899	1902	1910	162.92	..
6	1903	1906	1908	164.53	..
6 .....		....	1907	81.33	..
6 .....		....	1901	152.10	..
8 .....		....	1907	80	..
8	1881	1887	1888	80	..
8	1878	1883	1906	80	..
8	1890	1891	1906	80	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
8	1890	1891	1903	160	..
10	.....	....	1886	160	..
10	.....	....	1908	40	..
10	.....	....	1909	80	..
10	.....	....	1890	120	..
10	.....	....	1882	160	..
10	.....	....	1881	40	..
10	1903	1904	1904	40	..
12	1887	1890	1891	160	..
12	.....	....	1881	160	..
12	.....	....	1878	160	..
12	.....	....	1878	160	..
14	1891	1892	1900	160	..
14	.....	....	1894	160	..
14	.....	....	1901	160	..
14	.....	....	1913	160	..
18	1890	1891	1903	160	..
18	1906	1908	1913	160	..
18	1908	1908	....	...	40
18	1890	1891	1913	120	..
18	1900	1905	1911	160	..
20	1890	1894	1900	160	..
20	1877	1882	1892	160	..
20	1900	1901	1907	160	..
20	.....	....	1888	154.54	..
22	1900	1901	1909	160	..
22	.....	....	1882	190.02	..
22	.....	....	1878	104.97	..
22	.....	....	1888	150.28	..

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
24	1891	1899	1911	160	..
24	1890	1891	1913	160	..
24	1890	1891	1913	160	..
24 .....	.....	.....	1909	160	..
26	1900	1903	1906	160	..
26 .....	.....	.....	1899	160	..
26	1900	1900	1903	80	..
26	1885	1890	1884	160	..
26 .....	.....	.....	1909	80	..
28 .....	.....	.....	1906	80	..
28 .....	.....	.....	1881	141.51	..
28 .....	.....	.....	1879	73.87	..
28 .....	.....	.....	1885	164.80	..
28 .....	.....	.....	1906	160	..
30 .....	.....	.....	1907	80	..
30 .....	.....	.....	1881	140.47	..
30 .....	.....	.....	1881	107.15	..
30 .....	.....	.....	1879	133.93	..
30 .....	.....	.....	1881	153.56	..
32	1907	1907	1908	160	..
32	1890	1891	1912	160	..
32	1911	1912	1908	160	..
32	1890	1891	1908	160	..
34	1890	1891	.....	...	80
34 .....	.....	.....	1908	160	..
34	1890	1891	1908	160	..
34	1908	1910	1913	120	..
34	1890	1891	.....	...	40

RECAPITULATION

Number of entries made prior to 1875.....	0
Number of entries made between 1875 and 1880..	6
Number of entries made between 1880 and 1890..	17
Number of entries made since 1890.....	51
	—
Total entries	74

TOWNSHIP 26 SOUTH, RANGE 12 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
2	1913	80	..
2	1875	81	..
2	1879	160	..
2	1889	81.55	..
2	1877	40	..
2	80
2	1875	120	..
4	1901	170.70	..
4	1890	140	..
4	1896	1900	1904	80	..
4	1903	1904	1904	80	..
4	1889	170	..
6	1886	112.99	..
6	1883	39.85	..
6	1879	157.39	..
6	1878	153.81	..
6	1899	120	..
6	1873	40	..
8	1879	133.43	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
8			1892	40	..
8			1880	40	..
8			1881	146.72	..
8			1893	160	..
10			1898	40	..
10			1882	80	..
10	1901	1901	1909	160	..
10			1873	160	..
10					40
10			1875	160	..
12			1903	60	..
12	1880	1881	1887	160	..
12	1913	1913			40
12			1889	40	..
12	1901	1906	1907	160	..
12			1903	160	..
14			1891	160	..
14	1879	1882	1887	160	..
14			1884	160	..
14			1903	160	..
16			1874	80	..
18			1891	40	..
18			1875	160	..
18			1891	39.32	..
18			1891	158.10	..
18			1873	40	..
18			1881	160	..
18			1912	38.78	..
20			1874	28.64	..

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
20			1878	51.17	..
20			1889	40	..
20			1872	167.59	..
20			1875	39.79	..
20	1875	1881	1881	40	..
20			1874	87.93	..
20			1878	29.10	..
20			1877	40	..
22			1891	160	..
22	1901	1907	1907	160	..
22			1875	160	..
22			1884	160	..
24			1883	160	..
24			1883	160	..
24			1883	160	..
24			1883	160	..
26			1900	160	..
26			1883	160	..
26			1883	160	..
26			1884	160	..
28			1878	160	..
28			1891	40	..
28			1872	120	..
28			1874	160	..
28			1875	160	..
30			1874	160	..
30			1877	160	..
30			1874	160	..
30			1875	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
32	1873	120	..
32	1885	40	..
32	1873	160	..
32	1885	40	..
32	1877	160	..
32	1873	80	..
32	1875	40	..
34	1884	160	..
34	1884	160	..
34	1892	160	..
34	1891	160	..

RECAPITULATION

Number of entries made prior to 1875	.....14
Number of entries made between 1875 and 1880	..20
Number of entries made between 1880 and 1890	..26
Number of entries made since 1890	.....25
	—
Total entries	.....85

TOWNSHIP 27 SOUTH, RANGE 12 WEST.

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2	.....	.....	1902	163.40	..
2	1891	1899	1902	162.20	..
2	1902	1903	1913	160	..
2	1902	1903	1903	160	..
4	.....	.....	1902	80.41	..
4	.....	.....	1902	80.32	..

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
4	1885	1892	1902	80.32	..
4	1885	1892	1902	80	..
4	1885	1892	1902	80	..
4 .....	.....	.....	1884	166.19	..
4 .....	.....	.....	1891	160	..
6	1874	1879	1884	160.99	..
6 .....	.....	.....	1883	161.20	..
6	1879	1882	1883	163.41	..
6	1881	1883	1884	160	..
8 .....	.....	.....	1876	160	..
8	1874	1879	1883	160	..
8 .....	.....	.....	1876	160	..
8 .....	.....	.....	1876	160	..
10 .....	.....	.....	1891	160	..
10 .....	.....	.....	1891	160	..
10 .....	.....	.....	1891	160	..
10 .....	.....	.....	1891	160	..
12 .....	.....	.....	1901	120	..
12 .....	.....	.....	1902	40	..
12 .....	.....	.....	1877	160	..
12 .....	.....	.....	1901	120	..
12 .....	.....	.....	1890	80	..
12 .....	.....	.....	1901	80	..
12 .....	.....	.....	1902	40	..
14 .....	.....	.....	1903	80	..
14 .....	.....	.....	1877	120	..
14	1875	1877	1885	80	..
14 .....	.....	.....	1885	40	..
14	1880	1896	1896	160	..

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
14			1877	120	..
18			1883	160	..
18			1874	163.56	..
18			1881	162.68	..
18			1883	160	..
20			1881	80	..
20	1877	1883	1884	160	..
20			1876	160	..
20			1872	160	..
20			1891	80	..
22	1875	1882	1890	160	..
22	1902	1902	1903	160	..
22	1901	1904	1904	160	..
22			1902	160	..
24			1875	80	..
24			1883	160	..
24			1874	160	..
24			1879	160	..
24			1896	80	..
26			1883	160	..
26			1883	120	..
26			1882	160	..
26			1876	80	..
26			1880	120	..
28			1908	160	..
28			1892	160	..
28	1890	1893	1898	160	..
28			1891	160	..
30	1873	1880	1883	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
30			1889	42.05	..
30			1873	162.90	..
30			1874	40	..
30			1881	80	..
30			1881	80	..
30			1875	80	..
32	1889	1891	1903	160	..
32			1878	160	..
32	1885	1888	1899	80	..
32	1888	1889	1899	80	..
32			1889	160	..
32			1884	160	..
32			1890	160	..
32			1885	160	..
32	1884	1884	1885	160	..

RECAPITULATION

Number of entries made prior to 1875	5
Number of entries made between 1875 and 1880	12
Number of entries made between 1880 and 1890	26
Number entries made since 1890	35
—	
Total entries	78

TOWNSHIP 28 SOUTH, RANGE 12 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2			1883	168.90	..
2	1886	1888	1890	169.10	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
2			1887	178.80	..
2			1887	160	..
4			1891	102.60	..
4	1886	1889	1899	89.81	..
4			1890	80	..
4	1885	1893	1898	80	..
4	1886	1893	1898	80	..
4			1890	160	..
6	1882	1884	1887	163.72	..
6	1883	1883	1886	160	..
6			1876	162.26	..
6			1876	158.48	..
8	1884	1886	1890	160	..
8			1896	40	..
8			1881	120	..
8			1891	160	..
8			1893	160	..
10			1890	160	..
10	1891	1894	1901	160	..
10	1902	1906	1912	80	..
10			1891	160	..
10			1883	80	..
12			1878	172.12	..
12			1876	114.68	..
12			1894	132.10	..
12			1878	138.65	..
12			1899	80	..
14			1883	63.99	..
14			1877	62.76	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
14			1876	105.98	..
14	1880	1884	1891	160	..
14			1899	157.74	..
14			1891	80	..
18			1884	80	..
18			1866	120.95	..
18			1873	58.70	..
18			1862	72.40	..
18			1878	160	..
18			1886	80	..
18			1883	40	..
20			1892	120	..
20			1887	160	..
20			1882	160	..
20			1890	160	..
20			1888	40	..
22			1881	154.20	..
22			1890	152.64	..
22			1892	120	..
22			1894	150.64	..
24	1907	1907	1908	40	..
24			1907	159.64	..
24			1887	160	..
24			1908	40	..
24			1883	169.09	..
24			1887	59.51	..
26			1896	160	..
26	1882	1884	1890	160	..
26			1896	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
26			1884	145.76	..
26			1879	8.95	..
28			1887	80	..
28			1880	80	..
28			1893	40	..
28	1886	1886	1893	200	..
28	1886	1887	1897	90	..
28	1886	1886	1891	160	..
28			1875	40	..
28			1868	40	..
28			1870	130.41	..
28			1868	40	..
28			1880	160	..
28			1862	79.96	..
28			1859	80	..
28			1865	20	..
32			1874	80	..
32			1885	40	..
32			1865	40	..
32			1871	119.75	..
32			1862	140.87	..
32			1869	40	..
32			1862	160	..
34	1900	1903	1908	160	..
34	1889	1896	1899	160	..
34	1882	1883	1891	160	..
34	1883	1885	1886	160	..

RECAPITULATION

Number of entries made prior to 1875	15
Number of entries made between 1875 and 1880..	10
Number of entries made between 1880 and 1890..	24
Number of entries made since 1890	38
	—
Total entries	87

TOWNSHIP 26 SOUTH, RANGE 13 WEST.

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
12	1874	120	..
12	1874	208.30	..
12	1873	159.12	..
12	1877	80	..
12	1872	80	..
14	1874	61.07	..
24	1891	40	..
24	1878	160	..
24	1879	42.80	..
24	1874	173.38	..
24	1875	160	..
26	1872	160	..
26	1872	160	..
26	1873	160	..
26	1872	189.27	..

RECAPITULATION

Number of entries made prior to 1875	10
Number of entries made between 1875 and 1880 .	4
Number of entries made between 1880 and 1890 .	0
Number of entries made since 1890	1
<hr/>	
Total entries	15

TOWNSHIP 27 SOUTH, RANGE 13 WEST

LIST OF ENTRIES MADE

Section Number	Date of First Entry	Can- celled	Date of Present Entry	Number of Acres	Acres Still Vacant
2	1875	143.90	..
2	1872	102.46	..
2	1892	40	..
2	1877	190.05	..
2	1872	30.40	..
2	1883	40	..
2	1872	40	..
4	1872	151.14	..
4	1872	157.44	..
4	1872	160	..
4	1872	160	..
6	1871	644.50	..
8	1871	640	..
10	1872	80	..
10	1886	40	..
10	1872	160	..
10	1888	40	..
10	1872	160	..
10	1875	160	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
12			1875	160	..
12			1875	120	..
12			1872	40	..
12			1875	160	..
12			1875	160	..
14			1874	160	..
14			1873	160	..
14			1873	160	..
14			1873	160	..
16			1873	160	..
18			1871	160	..
22			1873	160	..
22			1873	160	..
22			1873	160	..
22			1873	160	..
24			1883	160	..
24			1873	160	..
24			1875	160	..
24			1883	160	..
26			1874	160	..
26			1883	160	..
26			1883	160	..
26			1883	160	..
28	1886	1887	....	...	320
28	1889	1889	....	...	160
28	1890	1894	....	...	160
34			1874	160	..
34			1876	120	..
34			1878	156.90	..

Section Number	Date of First Entry	Cancelled	Date of Present Entry	Number of Acres	Acres Still Vacant
34	1872	36	..
34	1875	4	..
34	1877	80	..
34	1887	80	..

RECAPITULATION

Number of entries made prior to 1875	.....29
Number of entries made between 1875 and 1880	..12
Number of entries made between 1880 and 1890	.. 9
Number of entries made since 1890	..... 1

Total entries51

SUMMARY BY TOWNSHIP AND RANGE

NUMBER OF ENTRIES

Township	Range	Prior to 1875	Between 1875 and 1880	Between 1880 and 1890	Since 1890
28 South,	7 West	.... 23	3	9	26
28 South,	8 West	.... 10	3	5	52
29 South,	8 West	.... 4	4	9	23
28 South,	9 West	.... ..	..	..	65
29 South,	9 West	.... 2	2	2	35
28 South,	10 West	.... ..	3	4	47
29 South,	10 West	.... ..	..	1	22
27 South,	11 West	.... ..	3	17	28
28 South,	11 West	.... ..	6	17	51
26 South,	12 West	.... 14	20	26	25
27 South,	12 West	.... 5	12	26	35
28 South,	12 West	.... 15	10	24	38
26 South,	13 West	.... 10	4	..	1
27 South,	13 West	.... 29	12	9	1
		<hr/>	<hr/>	<hr/>	<hr/>
		112	82	149	449

We follow this with a certified copy of the state records of school lands within the limits of the grant (Defendant's Exhibit 216). This list was duly certified by the clerk of the State Land Board and shows the disposition of all the school lands within the limits of the grant up to the time of beginning this suit. The list occupies thirteen pages of the printed Abstract, from page 303 to page 316, inclusive, and it is unnecessary to copy it here. We have tabulated it, however, so as to show the date of the entries, arranged on four periods:

First—Those applications which were made prior to 1875.

Second—Those applications which were made between 1875 and 1880.

Third—Those applications which were made between 1880 and 1890.

Fourth—All applications made since 1890.

And the result is as follows:

(And, first, we call the Court's attention to a mistake in the printed record: Township 26 South, Range 12 West, appearing first on page 303, is duplicated on page 311; Township 28 South, Range 8 West, appearing first on page 309, is duplicated on page 312. This was an error in arranging matter for the printer. Outside of this, the list beginning on page 303 and extending to page 315 of the printed Abstract is correct.)

Arranging these sections in a regular order, beginning in Range 6 West, the Roseburg end of the

Road, and running through Ranges 7, 8, 9, 10, 11, 12 and 13, the Coos Bay end of the Road, we get the following result:

SUMMARY BY TOWNSHIP AND RANGE OF
SCHOOL SECTIONS

NUMBER OF ENTRIES

Range	Township	Prior to 1875	Between 1875 and 1880	Between 1880 and 1890	Since 1890
6 West,	27 South.....	6	..	2	..
6 West,	28 South.....	3	2	1	..
7 West,	27 South.....	3	..	1	1
7 West,	28 South.....	5	2	3	..
7 West,	29 South.....	2	..	1	4
8 West,	27 South.....	2	..	..	4
8 West,	28 South.....	2	..	5	1
8 West,	29 South.....	1	1	1	6
9 West,	28 South.....	..	..	1	4
9 West,	29 South.....	2	..	8	..
10 West,	28 South.....	..	1	..	5
10 West,	29 South.....	..	..	5	..
11 West,	27 South.....	..	1	3	3
11 West,	28 South.....	..	1	9	3
12 West,	25 South.....	2	..	3	5
12 West,	26 South.....	2	1	3	5
12 West,	27 South.....	2	1	7	1
12 West,	28 South.....	..	4	8	2
13 West,	26 South.....	8	..	..	..
13 West,	27 South.....	7	..	..	..

GOVERNMENT IS ESTOPPED BY THE
RECORD IN PRIOR SUITS

(Defendant's Exhibits 240, 241, 242, 243)

It is alleged in the Government's Bill as an excuse for bringing this suit at this late day that the Government never knew of the matters now set up as constituting breach of condition until 1907.

"By reason of the premises the aforesaid violations of the aforesaid terms, provisions and conditions of said Act of Congress approved March 3, 1869, were concealed from and wholly unknown to your orator until on or about the year A. D. 1907."
(Page 30, printed Abstract.)

That this statement is entirely without foundation is conclusively shown by the record in these four suits:

EXHIBIT No. 240

(Pages 410 to 419, printed Abstract)

This is a certified copy of record of a case brought by the United States against Coos Bay Wagon Road Company and the Southern Oregon Company. The complaint, which was filed February 18, 1896, sets out the Act of March 3, 1869, the Act of Legislative Assembly October 22, 1870, Act of Congress June 18, 1874, and pleads that on the 19th of September, 1872, the Governor of the State of Oregon issued his certificate as to the completion and the acceptance of the road. The bill then recites that on the 12th day of February, 1875, a patent was issued to the Coos Bay Wagon Road Company

for the N.E. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$, Section 9, T. 28 S., Range 7 W., and further that on the 22nd day of January, 1863, James L. Miller, a duly qualified homestead entryman, entered said N.E. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Section 9, T. 28 S., Range 7 W., and that said homestead entry remained uncanceled and was in full force and effect up to December 5, 1870, and that said land was not public land subject to grant on the 3rd day of March, 1869, or on the 22nd day of October, 1870, or at any time prior to December 5th, 1870. It is alleged that the defendant, the Southern Oregon Company, claims title to this property, "its claim of title being as follows, viz: a deed to it *through a chain of mesne conveyances* from the patentee." The prayer of the bill is that the patent be set aside "and that said *several mesne conveyances* from said Coos Bay Wagon Road Company to the Southern Oregon Company may also be set aside, cancelled and declared null and void." This bill was demurred to by the Southern Oregon Company on September 21, 1896. On January 12, 1897, the demurrer was sustained, and on June 21, 1897, the bill was dismissed. The Government at this time, from February 18, 1896, when it filed its bill, to June 21, 1897, when it submitted to a dismissal of the bill and refused to plead further, knew, because its pleading says it knew, that the Southern Oregon Company claimed title to this land by reason of the grant *and the various mesne conveyances connecting the Southern Oregon Company with the patentee. It knew, therefore, of the deed to Miller*

and of the various transactions alleged in the bill in this case to constitute a breach of condition subsequent.

EXHIBIT No. 241

(Pages 419 to 439, printed Abstract)

On February 29th, 1896, the complainant filed its bill of complaint against the Coos Bay Wagon Road Company, The Southern Oregon Company, T. R. Sheridan, J. P. Sheridan, R. S. Sheridan, Margaret Briggs, Helen M. Rook and Mary A. Rook. The bill of complaint in that case sets out the different Acts of Congress pleaded in the bill in this case and in the Exhibit 240. It then pleads that on the 15th of February, 1877, and on October 3rd, 1874, patents were issued to the Coos Bay Wagon Road Company for the following land:

TOWNSHIP 28 SOUTH, RANGE 8 WEST

	Section
S.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$	1
Lots 1, 2, 3 and 4	3
S. $\frac{1}{2}$ of N. $\frac{1}{2}$, S. $\frac{1}{2}$	3
Lots 1, 2, 3, 4, S. $\frac{1}{2}$ of N. $\frac{1}{2}$, S. $\frac{1}{2}$	5
Lots 1, 2, 3, 4, E. $\frac{1}{2}$ of W. $\frac{1}{2}$ and E. $\frac{1}{2}$	7
All	9
All	17
Lots 1, 2, 3, 4, E. $\frac{1}{2}$ of W. $\frac{1}{2}$, E. $\frac{1}{2}$	19
All	21
All	29

TOWNSHIP 29 SOUTH, RANGE 9 WEST

	Section
N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$ and S.W. $\frac{1}{4}$	1
Lots 1, 2, 3, 4, S. $\frac{1}{2}$ of N. $\frac{1}{2}$, and S. $\frac{1}{2}$	3
Lots 1, 2, 3, 4, S. $\frac{1}{2}$ of N. $\frac{1}{2}$, and S. $\frac{1}{2}$	5
Lots 1, 2, 3, 4, E. $\frac{1}{2}$ of W. $\frac{1}{2}$, E. $\frac{1}{2}$	7
All	9

TOWNSHIP 28 SOUTH, RANGE 9 WEST

	Section
Lots 1, 2, 3, 4, S. $\frac{1}{2}$, S. $\frac{1}{2}$ of N. $\frac{1}{2}$	1
Lots 1, 2, 3, 4, S. $\frac{1}{2}$, S. $\frac{1}{2}$ of N. $\frac{1}{2}$	3
Lots 1, 2, 3, 4, S. $\frac{1}{2}$, S. $\frac{1}{2}$ of N. $\frac{1}{2}$	5
Lots 1, 2, 3, 4, E. $\frac{1}{2}$ of W. $\frac{1}{2}$, E. $\frac{1}{2}$	7
All	9
All	11
All	13
All	15
All	17
Lots 1, 2, 3, 4, E. $\frac{1}{2}$ of W. $\frac{1}{2}$, E. $\frac{1}{2}$	19
All	21
All	23
All	25
All	27
All	29
Lots 1, 2, 3, 4, E. $\frac{1}{2}$ of W. $\frac{1}{2}$, E. $\frac{1}{2}$	31
All	33
All	35

TOWNSHIP 28 SOUTH, RANGE 8 WEST

	Section
W. $\frac{1}{2}$ N. E. $\frac{1}{4}$, N.W. $\frac{1}{4}$ and S.E. $\frac{1}{4}$	11
E. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$, S.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	13
Lots 2, 3, N.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, N. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	15
Lot 4, S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$, W. $\frac{1}{2}$ S.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$	23
N.W. $\frac{1}{4}$, N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	25
All	27
N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, S.W. $\frac{1}{4}$, S. $\frac{1}{2}$ S.E. $\frac{1}{4}$	31
N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S.W. $\frac{1}{4}$, S.E. $\frac{1}{4}$, S. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	33
W. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, N.E. $\frac{1}{4}$, E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S.E. $\frac{1}{4}$, N.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	35

TOWNSHIP 29 SOUTH, RANGE 9 WEST

	Section
N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, S.W. $\frac{1}{4}$	1
S. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, S.E. $\frac{1}{4}$, W. $\frac{1}{2}$	11

TOWNSHIP 29 SOUTH, RANGE 8 WEST

	Section
Lots 1, 2, 3, 7, 8, 9, N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$	1
N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, S. $\frac{1}{2}$	3
N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, S. $\frac{1}{2}$	5
N.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$	7
All	9
E. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, S. $\frac{1}{2}$	11
N. $\frac{1}{2}$	15
Lot 3, N.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$	17

TOWNSHIP 29 SOUTH, RANGE 7 WEST

	Section
Lots 1, 2, 3, S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, S. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, N.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$	7

TOWNSHIP 28 SOUTH, RANGE 6 WEST

	Section
Frac. N.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, Frac. N.W. $\frac{1}{4}$ N.E. $\frac{1}{4}$	3
Lot 10	7
N.W. $\frac{1}{4}$	9
S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$, S. $\frac{1}{2}$ of S.E. $\frac{1}{4}$	23

TOWNSHIP 28 SOUTH, RANGE 7 WEST

	Section
E. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, W. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, E. $\frac{1}{2}$ of S.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	5
N.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, W. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, E. $\frac{1}{2}$, S.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$, S.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	7
N.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$, S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$, W. $\frac{1}{2}$ of S.E. $\frac{1}{4}$, S. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	9
S.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	11
S. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S.W. $\frac{1}{4}$, S.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$	13
Lots 1, 2, 3, 4, 5, 6, S.W. $\frac{1}{4}$ of S.E. $\frac{1}{4}$, S. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	15
S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$	17
N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, S.E. $\frac{1}{4}$, S.W. $\frac{1}{4}$	19
N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S.E. $\frac{1}{4}$, N.E. $\frac{1}{4}$ of S.W. $\frac{1}{4}$, W. $\frac{1}{2}$ of S.W. $\frac{1}{4}$	21
Lots 1, 2, 3, 4, 5, 6, 7, 8, 10, W. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, and N.W. $\frac{1}{4}$	23

	Section
W. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	25
Lots 3 and 4	27
Lots 1, 5, 6, 7, 8, 9, 10, N. $\frac{1}{2}$ of N.W. $\frac{1}{4}$	29
Lot 3	31
Lots 1 and 2	33
S.E. $\frac{1}{4}$, E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$	35

It is then pleaded that Congress passed an Act July 25, 1866 (the O. & C. Grant), and that the said grant, franchises, etc., were transferred to the Oregon & California Railroad Company, and that on March 26, 1870, the line or road of the O. & C. Co. was definitely fixed, and a plat filed, and that all of the lands described in the bill lie within the place limits of the grant of 1866, and therefore the title vested in the O. & C. Co., etc. It is alleged that the ministerial officers of the United States acted erroneously in issuing patents to the Coos Bay Wagon Road Company; and the various defendants, Sheridan, Briggs, Rook and Rook, purchased by *mesne conveyances* from the Coos Bay Wagon Road Company and took with notice. It is alleged in the bill that the Southern Oregon Company "*claims to be the owner in fee simple of all of the lands described herein, * * * its claim of title being as follows: A deed to it through a chain of mesne conveyances from the patentee, * * * ; that the said Southern Oregon Company claims said land in fee simple,*" but your orator insists that said Southern Oregon Company is chargeable with constructive notice of the several laws of the United States,

pleaded herein, and of the laws with regard to the lands of the United States and disposal thereof, *and that under the laws of Congress and by reason of the acts and doings of the said Coos Bay Wagon Road Company, no title could pass to said Southern Oregon Company, and that "said patent should be cancelled to it as well as to the grantee therein, the Coos Bay Wagon Road Company."* The prayer of the bill is "That the patent purporting to convey title to the said above-described lands may be set aside and declared null and void, and that said several *mesne* conveyances from said Coos Bay Wagon Road Company to the said defendants herein may be set aside, cancelled and declared null and void. To this bill the defendant Coos Bay Wagon Road Company and the Southern Oregon Company filed demurrers on May 25, 1896. On January 12, 1897, the demurrers were sustained, and on June 21, 1897, the suit was dismissed. No appeal was ever taken by the United States and the decree of the Court dismissed the bill for want of equity. *When this suit was brought and the decree dismissing the bill was entered the Government knew all it knows now as to the transfers from the Coos Bay Wagon Road Company to the Southern Oregon Company, and might have asked for a forfeiture of the whole grant with as much reason as it asks for it now.*

EXHIBIT No. 242

(Pages 439 to 500, printed Abstract)

On February 29, 1896, the Government filed its bill in this Court against the Coos Bay Wagon Road Company, the Southern Oregon Company, Lorenz Vogl, John Vogl, Mathias Vogl, W. S. Hamilton, Mary Mark, Charlotte H. Elliott, Frederick Elliott, John Weaver, John Norman and C. C. Bonebrake. In this bill the Government pleaded the various Acts of Congress and of the State of Oregon pleaded in the bill herein, also pleaded the acceptance by the Governor of the road September 19, 1872. It is then alleged, March 26, 1873, a patent was issued to the Coos Bay Wagon Road Company for certain lands described and on February 12, 1875, another patent was issued for certain other lands. That Samuel C. Braden was a duly qualified entryman under the laws of the United States and on the — day of January, 1869 (prior to the grant), settled upon a quarter section, to wit: the N.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of Section 25, Township 27 South, Range 12 West, and that he was a qualified homesteader, etc. It is also alleged that other lands to the amount of 1,099.50 acres described in the bill were patented to the Coos Bay Wagon Road Company by mistake and as a matter of fact lie entirely outside of the limits of the grant, and that the ministerial officers, etc., made a mistake in issuing the patents. It is also alleged that the defendant "the Southern Oregon Company, defendant herein, claims title to

the lands described herein (except the lands sold by it)." Its claim of title being as follows:

"A deed to it through a chain of mesne conveyances from the patentee."

The prayer of the bill is as follows:

"That the said Southern Oregon Company claims title to said lands in fee simple, but your orator insists that said Southern Oregon Company is chargeable with constructive notice of the several Acts of Congress of the United States pleaded herein, and of the laws in regard to the public lands of the United States and the disposal thereof, and that under the Acts of Congress and the laws relating to the disposal of public lands of the United States and the acts and doing of said Coos Bay Wagon Road Company, no title could pass to said Southern Oregon Company and said patents should be cancelled as to it as well as to the grantee therein, the Coos Bay Wagon Road Company."

On May 25, 1896, a demurrer was filed by the Southern Oregon Company to this bill. On March 10, 1897, the Coos Bay Wagon Road Company answered the bill. In the answer the Coos Bay Wagon Road Company pleads the issuance of the patent to it for the lands described in the bill, and in fact pleads all the legislation set out in the complaint in this suit and the compliance by the Coos Bay Wagon Road Company with all the requirements of the grant. It then pleads as follows:

“That on January 7, 1884, this defendant, Coos Bay Wagon Road Company, by deed with covenants of general warranty of said date, conveyed said N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of Section 7, Township 26, and N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Section 25, Township 27 South, of Range 12 West of the Willamette Meridian, and other lands, to W. H. Besse, for the consideration of \$91,715.05 paid to it, which deed was duly filed by said Besse for record and recorded March 19, 1884, on page 110 of Book 13 of the Records of Deeds of Coos County, Oregon, where said premises and other lands are situated.” (P. 468, Printed Abstract.)

It is then alleged that the other lands were conveyed in like manner to the different grantees. On March 10, 1897, the Southern Oregon Company filed its answer setting up the same matters, and then says:

“That this defendant claims the title and possession of said premises, as alleged in the bill of complaint, under said Coos Bay Wagon Road Company, through the following chain of *mesne* conveyances:

“(1) Deed with covenants of general warranty from said Coos Bay Wagon Road Company to W. H. Besse for said N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of Section 7, Township 26, and N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Section 25, Township 27 South, of Range 12 West of the Willamette Meridian, and other lands, reciting a consideration paid of \$91,715.05, date January 7, 1884, and recorded March 19, 1884, on page 119 of Book 13 of the Records of Deeds of Coos County, Oregon.

“(2) Deed with covenants of general warranty from said W. H. Besse and — Besse, his wife, to the Oregon Southern Improvement Company, a corporation, for said premises and other lands, reciting a consideration of \$91,715.05 paid, dated June 4, 1884, and recorded September 8, 1885, on page 236 of Book 14 of the Records of Deeds of said Coos County, Oregon.

“(3) Deed of bargain and sale from George H. Durham, Mastery in Chancery under decree of foreclosure and sale of the Circuit Court of the United States for the District of Oregon, entered April 11, 1887, against said Oregon Southern Improvement Co. in suit No. 1344, to W. W. Crapo and W. J. Rotch, for said premises and other lands, reciting a consideration of \$120,000 paid, dated November 16, 1887, and recorded March 31, 1888, on page 175 of Book 16 of the Records of Deeds of said Coos County, Oregon.

“(4) Deed of bargain and sale from said W. W. Crapo and — Crapo, his wife, and W. J. Rotch and — Rotch, his wife, to Southern Oregon Company, this defendant, for said premises and other lands, reciting a consideration of one dollar paid, dated December 14, 1887, and recorded March 31, 1888, on page 213 of Book 16 of the Records of Deeds of said Coos County, Oregon.

“(5) Deed of bargain and sale from said Coos Bay Wagon Road Company to Mary M. Noah for said S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ and N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Section 7, Township 26 South, of Range 12 West

of the Willamette Meridian, and other lands, reciting a consideration of \$200 paid, dated May 19, 1873, and recorded May 19, 1873, on page 570 of Book 2 of the Records of Deeds of said Coos County, Oregon.

“(6) Deed of bargain and sale from said Mary M. Noah and John Noah, her husband, to David M. Turner for said premises and other lands, reciting a consideration of \$180 paid, dated January 25, 1874, and recorded January 25, 1874, on page 326 of Book 3 of the Records of Deeds of Coos County, Oregon.

“(7) Deed of quit claim from said David N. Turner and Emma Turner, his wife, to B. S. Stickney, for said premises and other lands, reciting a consideration of \$250 paid, dated September 15, 1875, and recorded September 15, 1875, on page 519 of Book 5 of the Records of Deeds of said Coos County, Oregon.

“(8) Deed with covenants of general warranty from said B. S. Stickney to Cortes Corning for said premises and other lands, reciting a consideration of \$300 paid, dated October 13, 1875, and recorded October 14, 1875, on page 546 of Book 5 of the Records of Deeds of said Coos County, Oregon.

“(9) Deed of bargain and sale from said Cortes Corning and Charlotte Corning, his wife, to said B. S. Stickney for said premises and other lands, reciting a consideration of \$300 paid, dated February 7, 1876, and recorded July 12, 1883, on page 124 of Book 12 of the Records of Deeds of said Coos County, Oregon.

“(10) Deed of bargain and sale from said B. S. Stickney to J. A. Yoakam for said premises, reciting

a consideration of \$400 paid, dated November 11, 1880, and recorded February 17, 1881, on page 239 of Book 9 of the Records of Deeds of said Coos County, Oregon.

“(11) Deed of bargain and sale from said J. A. Yoakam and — Yoakam, his wife, to H. H. Luce, for said premises, reciting a consideration of \$400 paid, dated January 3, 1881, and recorded February 17, 1881, on page 240 of Book 9 of the Records of Deeds of said Coos County, Oregon.

“(12) Deed with covenants of general warranty from said H. H. Luce and — Luce, his wife, to J. N. Knowles, for said premises and other lands, reciting a consideration of \$100,000 paid, dated June 20, 1883, and recorded July 23, 1883, on page 140 of Book 12 of the Records of Deeds of said Coos County, Oregon.

“(13) Deed with covenants of general warranty from said J. N. Knowles and — Knowles, his wife, to the Oregon Southern Improvement Company, a corporation, for said premises and other lands, reciting a consideration of \$10 paid, dated November 22, 1883, and recorded January 16, 1884, on page 556 of Book 12 of the Records of Deeds of said Coos County, Oregon.

“(14) Deed of bargain and sale from George H. Durham, Master in Chancery, under decree of foreclosure and sale of the Circuit Court of the United States for the District of Oregon, entered April 11, 1887, against said Oregon Southern Improvement Co. in suit 1344, to W. W. Crapo and W. J. Rotch,

for said premises and other lands, reciting a consideration of \$120,000 paid, dated November 16, 1887, and recorded March 31, 1888, on page 175 of Book 16 of the Records of Deeds of said Coos County, Oregon.

“(15) Deed of bargain and sale from W. W. Crapo and — Crapo, his wife, and W. J. Rotch and — Rotch, his wife, to Southern Oregon Co., this defendant, for said premises and other lands, reciting a consideration of one dollar paid, dated December 14, 1887, and recorded March 31, 1888, on page 213 of Book 16 of the Records of Deeds of said Coos County, Oregon.

“(16) Deed of bargain and sale from said Coos Bay Wagon Road Company to John Miller for said S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$ of Section 19; N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$, S.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ and S.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of Section 29, Township 25; S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$, N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ of Section 5; and N.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of Section 7, Township 26 South, of Range 12 West; and W. $\frac{1}{2}$ of S.E. $\frac{1}{4}$ of Section 1, Township 26 South, of Range 13 West of the Willamette Meridian, and other lands, reciting a consideration of \$35,534 paid, dated May 31, 1875, and recorded June 15, 1875, on pages 320-328 of Book 5 of the Records of Deeds of Coos County, Oregon.

“(17) Deed of bargain and sale from said John Miller to Collis P. Huntington, Charles Crocker, Leland Stanford and Mark Hopkins, for said premises and other lands, reciting a consideration of \$35,000 paid, dated June 22, 1875, and recorded July

3, 1875, on page 359 of Book 7 of the Records of Deeds of said Coos County, Oregon.

“(18) Deed of bargain and sale from said Collis P. Huntington and Elizabeth Huntington, his wife, Leland Stanford and Jane Lathrop Stanford, his wife, and Mary Francis Sherwood Hopkins, widow and sole heir of said Mark Hopkins, deceased, to said Charles Crocker, for said premises and other lands, reciting a consideration of one dollar paid, dated March 27, 1882, and recorded May 2, 1882, on pages 621-631 of Book 9 of the Records of Deeds of said Coos County, Oregon.

“(19) Deed of bargain and sale from said Charles Crocker and Mary A. Crocker, his wife, to W. H. Besse, for said premises and other lands, reciting a consideration of \$1.75 per acre paid, dated March 20, 1883, and recorded January 24, 1884, on page 585 of Book 12 of the Records of Deeds of said Coos County, Oregon.

“(20) Deed of quit claim from said W. H. Besse and — Besse, his wife, to Russel Gray, for said premises and other lands, reciting a consideration of ten dollars paid, dated December 29, 1883, and recorded January 31, 1884, on page 602 of Book 12 of the Records of Deeds of said Coos County, Oregon.

“(21) Deed of quit claim from said Russel Gray to the Oregon Southern Improvement Company (a corporation) for said premises and other lands, reciting a consideration of ten dollars paid, dated January 5, 1884, and recorded January 31, 1884,

on page 611 of Book 12 of the Records of Deeds of said Coos County, Oregon.

“(22) Deed of bargain and sale from Geo. H. Durham, Master in Chancery, under decree of foreclosure and sale out of the Circuit Court of the United States for the District of Oregon, entered April 11, 1887, against said Oregon Southern Improvement Company, in suit No. 1344, to W. W. Crapo and W. J. Rotch, for said premises and other lands, reciting a consideration of \$120,000 paid, dated November 16, 1887, and recorded March 31, 1888, on page 175 of Book 16 of the Records of Deeds of said Coos County, Oregon.

“(23) Deed of bargain and sale from said W. W. Crapo and — Crapo, his wife and W. J. Rotch and — Rotch, his wife, to Southern Oregon Company, this defendant, for said premises and other lands, reciting a consideration of one dollar paid, dated December 14, 1887, and recorded March 31, 1888, on page 213 of Book 16 of the Records of Deeds of said Coos County, Oregon.”

The answer then proceeds:

“And this defendant further says that to the best of its knowledge, information and belief, said Military Wagon Road from the navigable waters of Coos Bay to Roseburg, Oregon, was laid out and constructed by said Coos Bay Wagon Road Company through the N.W. $\frac{1}{4}$ of Section 33, the N.E. $\frac{1}{4}$ of Section 32, the S.W. $\frac{1}{4}$ of Section 29, and the S. $\frac{1}{2}$ of Section 30, Township 26 South, Range 12 West

of the Willamette Meridian, and that no part of said premises is more than six miles distant from the line of said road; and that such has been the general understanding and belief of all persons living in the vicinity of said premises and road, ever since its completion in 1872, until the present time; and both said list approved by the Secretary of the Interior and issued to said Coos Bay Wagon Road Company for said premises and other lands, as inuring to the State of Oregon under said grant, on March 26, 1873, and patent issued therefor on February 12, 1875, recorded as aforesaid, recite that said premises lie respectively within the three and six-mile limits of said grant; and both said list and patent, and each and all of said deeds constituting the chain of *mesne* conveyances from said Coos Bay Wagon Road Company, patentee, to this defendant aforesaid, were in due form and regularly executed and recorded on the dates respectively aforesaid, and purported to convey a perfect and indefeasible title to said premises; and the consideration recited in each of said deeds respectively, as aforesaid, was actually paid in money at the time of the execution thereof; and at or before the respective times of payment of said consideration and the delivery and execution of said deeds respectively and the recording thereof aforesaid, said W. H. Besse; Oregon Southern Improvement Company; Mary M. Noah; David N. Turner; B. S. Stickney; Cortes Corning; J. A. Yoakam; H. H. Luce; J. N. Knowles; John Miller; Collis P. Huntington, Charles Crocker,

Leland Stanford, and Mark Hopkins; Russel Gray, W. W. Crapo, and W. J. Rotch; and the Southern Oregon Company, this defendant, respectively, had no notice whatsoever that said premises or any portion thereof lay without the limits of said grant, or that the ministerial, or any, officers of the United States had acted erroneously or contrary to the law in approving or issuing said list of patent, or any patent, therefor to said Coos Bay Wagon Road Company, under the facts stated in the bill of complaint, or otherwise, or of any Act of Congress, or law relating to the disposal of the public land of the United States, or act or doing of said Coos Bay Wagon Road Company, or any other matter or thing whatever, preventing the title to said premises from passing to them or any of them under said deeds respectively in fee simple or in any manner impairing or affecting the title thereto under said respective deeds, or any of them, but respectively purchased said premises at the dates of the respective deeds to them aforesaid, and respectively paid the considerations recited therein in money at the time of the execution and delivery thereof to them, on their respective dates aforesaid, and accepted and recorded the same on the respective dates aforesaid, relying upon and induced by said list and patent and said recital therein, and not otherwise, and they and each of them were, and this defendant is, purchasers of said premises in good faith and for a valuable and adequate consideration; and this defendant has ever since receiving and recording said deed for said

premises from W. W. Crapo and W. J. Rotch and wives, as aforesaid, held the title and possession thereof, and exercised full dominion over the same as absolute owner, in good faith and without any notice of any claim on the part of the United States thereto until the commencement of this suit, and is the owner in fee simple absolute thereof, and justly and legally entitled to the same."

To this answer of the Coos Bay Wagon Road Company the Government filed a replication on the 21st day of May, 1897. For some unexplainable reason the Coos Bay Wagon Road Company filed what is called a "demurrer" to this replication on the 5th day of June, 1897. This "demurrer" was sustained by the Court, and the order sustaining the demurrer goes on to say: "And thereupon, on motion of said plaintiff, it is ordered that said plaintiff be, and it is hereby allowed ten days from this date in which to further plead herein." On the 25th of June, the plaintiff not having filed any additional pleading, the Court entered the following order: "Now, at this day comes the plaintiff herein, by Mr. Charles J. Schnabel, Assistant United States Attorney, and the defendants herein by Mr. B. B. Beekman, of counsel, and thereupon it appearing to the Court that the demurrers of said defendants to the replication herein has been sustained by the Court, on motion of said defendants, it is ordered, adjudged and decreed that said bill of complaint herein be, and the same is hereby dismissed."

This record is curious, of course, and probably without a parallel. But while the procedure of demurring to a replication was never heard of before, yet the answer of the Coos Bay Wagon Road Company sets up in detail the history of this grant and the complete chain of title down to the Southern Oregon Company, and the Government was put upon notice then, if not before, of all the transfers pleaded by the defendant in this present suit.

EXHIBIT No. 243.

(Pages 500-529, printed Abstract.)

On the 25th day of August, 1897, the United States filed its bill of complaint against the Coos Bay Wagon Road Company. In this bill all of the legislation and the acts of the Government, etc., pleaded in the former bills and in the Government's bill in the present case, were pleaded. The bill then proceeds to state that on the 26th day of March, 1873, there was certified to the Coos Bay Wagon Road Company the N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$ Section 25, Township 27 South, Range 12 West of the Willamette Meridian, and that at said time Samuel C. Braden was a duly qualified homestead entryman on said 40 acres, having settled on the same on the 7th day of January, 1869. It is further alleged that on the 26th of March, 1873, the United States patented to the Coos Bay Wagon Road Company the following lands:

“The S.E. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 19; the N. $\frac{1}{2}$ of the N.E. $\frac{1}{4}$, the N. $\frac{1}{2}$ of the N.W. $\frac{1}{4}$, the S.E. $\frac{1}{4}$ of

the N.W. $\frac{1}{4}$, and the S.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$ of Section 29, and the W. $\frac{1}{2}$ of the N.W. $\frac{1}{4}$ of Section 33, all in Township 25 South, Range 12 West of the Willamette Meridian; and the W. $\frac{1}{2}$ of the N.W. $\frac{1}{4}$ and the N.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of Section 5, and the N.W. $\frac{1}{4}$ and the N.E. $\frac{1}{4}$ and the N. $\frac{1}{2}$ of the N.W. $\frac{1}{4}$, the S.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ and the N.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of Section 7, all in Township 26 South, of Range 12 West of the Willamette Meridian."

It is further alleged in the bill that on the 12th of February, 1875, there was patented to the Coos Bay Wagon Road Company the following lands: N.W. $\frac{1}{4}$, W. $\frac{1}{2}$ of the N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$, Lot 1 of Section 13, and the W. $\frac{1}{2}$ of the S.E. $\frac{1}{4}$, S.E. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 1, all in Township 26 South of Range 13 West.

It is then alleged that Samuel C. Braden was a duly qualified homestead entryman in January, 1869, on the N.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of Section 25, Township 27 South, Range 12 West, etc.

It is then alleged that the following lands lie outside the limit of the grant: The S.E. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$, in Section 19, Township 25 South, Range 12 West, 40 acres; the North $\frac{1}{2}$ of the N.E. $\frac{1}{4}$, the North $\frac{1}{2}$ of the N.W. $\frac{1}{4}$, S.E. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ and S.W. $\frac{1}{4}$ of the N.E. $\frac{1}{4}$, in Section 29, Township 25 South, Range 12 West, 240 acres; the West $\frac{1}{2}$ of the N.W. $\frac{1}{4}$ of Section 33, Township 25 South, Range 12 West, 80 acres; the West $\frac{1}{2}$, N.W. $\frac{1}{4}$ and N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$,

Section 5, Township 26 South, Range 12 West, 113.31 acres; the N.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$, the N. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ and N.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$, Section 7, Township 26 South, Range 12 West, 196.70 acres; the N.W. $\frac{1}{4}$, the W. $\frac{1}{2}$ N.E. $\frac{1}{4}$, N.W. $\frac{1}{4}$ S.W. $\frac{1}{4}$ and Lot 1, Section 13, Township 26 South, Range 13 West, 309.58 acres; the W. $\frac{1}{2}$ S.E. $\frac{1}{4}$ and S.E. $\frac{1}{4}$ S.E. $\frac{1}{4}$ Section 1, Township 26 South, Range 13 West, 130 acres, containing in all 1099.59 acres.

Defendant's Exhibits Nos. 242 and 243 covered the same lands. The suit, Exhibit No. 242, was dismissed June 25, 1897. The suit, Exhibit No. 243, was begun August 25, 1897, but does not refer in any way to the former suit. It is a bill of discovery. At the foot of the bill certain inquiries were propounded, as follows:

"1st. Whether any of the lands described herein have been sold.

"2nd. What are the particulars of such sales if sales were had?

"3rd. How were the lands sold? For cash or on deferred payments? To whom were the lands sold? When were they sold and for what consideration?

"4th. Were the lands, if sold, sold with or without covenants of warranty?

"5th. If any of the lands were sold on deferred payments, state the particulars of contracts of such sales; what has been paid thereon, how much is still due, and when is the same payable.

"And your orator prays for a construction of the

grant and a decree defining the rights of the parties in view of the grant and the proceedings thereunder.

“And your orator prays also that the moneys received by the defendant for any of the lands described herein sold, be declared to be the moneys and property of the United States, and a decree that they are held in trust by defendant for the complainant, and that such money, to the extent of \$2.50 per acre for the lands erroneously taken, be paid to defendant, and that the lands not taken by the complainant be declared, etc.”

Answering these interrogatories, the defendant Coos Bay Wagon Road Company said (page 520, printed Abstract) :

“And, to the second interrogation propounded therein, answers and says: *That said lands were sold with other lands derived by it from said grant, amounting altogether to 87,405.18, at the price of \$1.00 per acre;*

“*And to the third interrogation propounded therein answers and says: Said lands were sold for cash to John Miller, May 31, 1875, and for the consideration of \$1.00 per acre and in the aggregate \$1139.59.*”

The defendant pleaded the record in suit, Exhibit No. 242 in bar. The defendant further pleaded in answer to the claim for an accounting that the money received from the lands upon sale to Miller, \$1139.59, was distributed to its stockholders in good faith. Issues being joined, the case was heard and

decree entered. The decree cancelled the patent to the N.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ of Section 25, Township 27 South, Range 12 West, and further decreed as follows:

“It is further ordered and decreed that said complainant recover of and from said defendant the sum of \$1099.59, said sum being the value of 1099.59 acres of land described in plaintiff’s bill of complaint, which lie outside of the limits of the grant of lands to the defendant described in plaintiff’s bill of complaint.”

The record (Exhibit No. 242) shows a bill by the Government praying for the cancellation of the patents executed to the Coos Bay Wagon Road Company for the lands described in the bill. Discovery was not sought nor needed. The Coos Bay Wagon Road Company and the Southern Oregon Company answered the bill, setting out completely the chain of title relied upon in the answer in this case. Issue was joined, therefore, by the filing of the Government’s replication; and while the procedure of sustaining a demurrer to a replication cannot be understood or explained, the fact remains that the Government’s bill was dismissed, rightfully or wrongfully, and the Government submitted to the decision of the Court. This order of dismissal was entered June 25, 1897. On August 25, 1897, just two months afterwards, with this record before it, the Government brought another suit, this time against the Coos Bay Wagon Road Company alone, in which

the allegations are practically the same as in the suit Exhibit No. 242, but instead of applying to have the patents cancelled the Government asked for "discovery" as to what disposition the Coos Bay Wagon Road Company made of the land, and prays, *not for a decree cancelling the patent, but,*

"And your orator prays also, that the moneys received by the defendant for any of the lands described herein sold, be declared to be the moneys and property of the United States, and for a decree that they are held in trust by defendant for the complainant, and that such money, to the extent of \$2.50 per acre for the lands erroneously taken, be paid to complainant, and that the lands *not sold by defendant be declared lands of the United States, and the patents thereto be decreed to be null and void.*"

PRETENDED APPLICATIONS TO PURCHASE WERE ALL SHAM.

It is pretended by the Government that there were some several hundred applications to purchase these lands from the Southern Oregon Company and the applications were refused. A reference to the testimony will show the nature of these applications. In the latter part of 1903 and up to March, 1904, a movement was started by E. B. Seabrook and C. T. McKnight, attorneys, to compel the Southern Oregon Company to sell its timber land at \$2.50 per acre to whomsoever might apply therefor. At first they did not intend to include many, but when the word got out that applicants need not advance any

money at all—only pretend to have it—and that by simply asking they could get quarter sections worth from three to six thousand dollars for four hundred dollars, they came from everywhere to take advantage of the “find.”

As Mr. McKnight says (page 334, printed Abstract) :

“Q. Was there much interest shown by the people, much desire to get this land?

A. Well, there seemed to be more of a brainstorm than anything else. The office was simply crowded, that’s all.”

McKnight’s testimony, from page 337 to page 342, gives a complete history of this transaction, showing how these applications were manufactured and for what purpose, and the utter sham of it all. On page 337, printed Abstract, he said :

“Q. But had you people gone out and selected the particular quarter sections you wanted?

A. No, except the map itself.

Q. You knew nothing about the relative values of it?

A. We knew what the cruise was and the description from the map was all, never been on the land itself.”

It appears that these people McKnight and Seabrook had the form of application printed, there were so many that came, and that everyone paid \$15.00. On page 338 McKnight says :

“Q. And did you refuse anybody?

A. No, there was nobody refused, but it was explained to all of them exactly what we were trying to do, that is all.

Q. Each one paid how much?

A. \$15.00.”

On page 340, Printed Abstract, he says:

“Q. You knew when you presented all these two or three hundred applications they would not be received?

A. I was satisfied they would be rejected.

Q. That is the reason you didn't go through the form of lugging up \$400 in gold every time?

A. Yes, sir.

Q. You knew they would not take it?

A. Certainly I knew they would not take it. *Anybody would know that that knew the conditions.*”

Mr. Geo. Watkins, who had charge of the matter of presenting the applications to purchase from the Southern Oregon Company, gives a very clear explanation on pages 322, 323, 324 and 325 of the Testimony. He says that he had a cruise in the timber that was obtained from M. J. Kinney, or a copy was made of Kinney's cruise, and that this cruise was consulted in locating applicants. That in response to information conveyed to the public, generally when applicants came in without having previously picked out a quarter section themselves, Watkins would pick them out a good quarter sec-

tion from the cruise he had, neither he nor the applicants knowing anything about the land except what the cruise showed. As to this he says (pages 325-326, printed Abstract) :

“A. So far as I was concerned, everyone was told that it was a chance, that it was a gamble.

Q. Taking a long shot at it?

A. Yes, we told them it was a gamble, or I did, those that I talked with, and if they wanted to take the chance and pay \$21.00, very well, and if they didn't they would better let it alone.

Q. But what I mean is, that if they could get the quarter section that you suggested to them for \$400 and get a complete title to it, it would be a very good bargain, wouldn't it?

A. Indeed it would, most of it.

Q. And then they paid you the \$21.00 for your expense and for making these applications and taking care of it for them. Now, Mr. Watkins, did they each one bring \$400 to you?

A. No, sir.

Q. That is a fact, they didn't do that?

A. No, sir.

Q. You knew when you made the applications that they were going to be refused after you got started on it?

A. Yes, sir.

Q. So that that was a formality. They probably would be ready to give it if you asked them for it, but none of them did as a matter of fact leave the money with you?

A. No, sir.

Q. When you went to make the application did you then tender \$400 in money to Mr. Shine?

A. Yes, sir.

Q. *One \$400 would do for the whole bunch?*

A. *One \$400 answered for the whole bunch."*

Surely no argument will be needed to show that these applications were not in good faith.

EXHIBIT No. 190.

(Pages 316-317, printed Abstract.)

Exhibit 190 contains the certificates of the Governor of the State of Oregon as to the completion and acceptance of the road. These various papers show the completion and acceptance of the road, in its entirety, prior to September 19, 1872.

It is impossible, of course, in a brief of the facts to include *all the facts*, but we have endeavored in the foregoing skeleton to present to the Court the framework of the defendant's case. No attempt was made by the Government to show bad faith on the part of this defendant or any of the holders of this title through whom defendant claims. The Government's oral testimony was directed to showing that the road was not properly constructed and that the terms of the grant were known by the first settlers. These are immaterial matters and the testimony in regard to them should be struck out.

Respectfully submitted,

DOLPH, MALLORY, SIMON & GEARIN,
Solicitors for Southern Oregon Company.